



California Regulatory Notice Register

REGISTER 2008, NO. 35-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

AUGUST 29, 2008

PROPOSED ACTION ON REGULATIONS

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

Conflict of Interest Code — Notice File No. Z2008-0819-01 1503

State Agency: Senate Rules Committee

Multi-County: Fairfield-Suisun Unified School District
North Orange County Regional Occupational Program

TITLE 2. STATE PERSONNEL BOARD

Local Agency Personnel Standards — Notice File No. Z2008-0819-02 1504

TITLE 4. CALIFORNIA HORSE RACING BOARD

Altering of Sex of Horse — Notice File No. Z2008-0819-07 1506

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Use of High Visibility Apparel; (2) Machinery and Equipment (Definition of "Equipment") —

Notice File No. Z2008-0819-08 1508

TITLE 9. DEPARTMENT OF REHABILITATION

Conflict of Interest — Notice File No. Z2008-0814-02 1514

TITLE 10. DEPARTMENT OF INSURANCE

January 1, 2009 Workers' Compensation Pure Premium Rates — Notice File No. Z2008-0818-03 1516

TITLE 10. DEPARTMENT OF INSURANCE

Changes to Rules 24 and 55 of the California Automobile Assigned Risk Plan — Notice File

No. Z2008-0815-02 1521

TITLE 11. PEACE OFFICER STANDARDS AND TRAINING

Training Specifications for Peace Officer Basic Courses — Notice File No. Z2008-0813-01 1524

(Continued on next page)

***Time-
Dated
Material***

TITLE 20. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION <i>Amendments to Appliance Efficiency Regulations (Energy Commission Docket No. 08-AAER-1B, Metal Halide Luminaires, Residential Pool Pumps and Portable Spas, etc.) — Notice File No. Z2008-0819-03</i>	1525
---	------

TITLE 20. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION <i>Amendments to Appliance Efficiency Regulations (Commission Docket No. 08-AAER-1A General Service Lighting; Portable Luminaires) — Notice File No. Z2008-0819-04</i>	1533
---	------

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME <i>CESA Consistency Determination Request for Ygnacio Valley Road Restoration Project, Contra Costa County, 2080-2008-21-03</i>	1539
--	------

DEPARTMENT OF CARE HEALTH SERVICES <i>Public Comment Period for Revised Billing Codes for Medi-Cal Program</i>	1539
---	------

DISAPPROVAL DECISION

DEPARTMENT OF WATER RESOURCES	1540
-------------------------------------	------

ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS

DEPARTMENT OF CORRECTIONS AND REHABILITATION <i>Regarding a memorandum issued February 21, 2002, titled “Unauthorized Possession of Razor Blades by Inmates Housed in Administrative Segregation Units, Psychiatric Services Units, or in Security Housing Units</i>	1541
---	------

OAL REGULATORY DETERMINATION

DEPARTMENT OF MENTAL HEALTH <i>2008 OAL Determination No. 19 (OAL File # CTU 2008-0129-01), concerning the Department of Mental Health, re: Clinical Evaluator Handbook and Standardized Assessment Protocol (2007)</i>	1545
--	------

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State	1553
Sections Filed, March 19, 2008 to August 20, 2008	1555

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$302.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. “Periodicals Postage Paid in Saint Paul, MN.” **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODES

AMENDMENT

STATE AGENCY: Senate Rules Committee
MULTI-COUNTY: Fairfield-Suisun Unified
School District
North Orange County Regional
Occupational Program

A written comment period has been established commencing on **August 29th, 2008**, and closing on **October 13th, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention Sarah Olson, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **October 13th, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to **Sarah Olson**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED CONFLICT
OF INTEREST CODES**

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Sarah Olson**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. STATE PERSONNEL BOARD

**NOTICE OF PROPOSED REVISION OF
REGULATIONS
AND STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 5. Local Agency Personnel Standards
Chapter 2. Merit System Regulations
Article 5. Certification
Article 6. Appointments, Transfers and
Nonpunitive Separations and Demotions
Subarticle 4. Reduction in Force**

DATE: August 19, 2008
TO: ALL INTERESTED PARTIES
**SUBJECT: PROPOSED AMENDMENTS TO
REGULATIONS CONCERNING
NUMBER OF ELIGIBLES ON A
LOCAL AGENCY CERTIFI-
CATION LIST**

AUTHORITY

Under authority established in Government Code (GC) sections 18701 and 19800, the State Personnel Board (SPB or Board) proposes to amend Title 2 of the California Code of Regulations (2 CCR), sections 17463, 17470, and 17519, which provides for procedures utilized by the SPB for the establishment of Eligible Lists utilized by local agencies. Pursuant to GC sections 18211 and 18213, these regulations are exempt from the Administrative Procedures Act (Chapter 3.5, commencing with Section 11340, of Part 1 of Division 3).

REFERENCE

These regulations are amended to implement, interpret, and/or make specific GC sections 19800 and 19803.

PUBLIC HEARING

Date and Time: November 3, 2008, from 9:45 a.m.—10:15 a.m.
Place: State Personnel Board
First Floor Auditorium
801 Capitol Mall
Sacramento, CA 95814
Purpose: To receive written and/or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD

The written public comment period will close Monday, October 13 2008, at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Bruce A. Monfross, Staff Counsel IV
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814

or to: bmonfross@spb.ca.gov or faxed to his attention at: (916) 653-4256.

**AVAILABILITY OF PROPOSED TEXT AND
STATEMENT OF REASONS/CONTACT PERSONS**

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available for review upon request to Bruce Monfross. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross, as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Bruce Monfross at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-1456 or TDD (916) 653-1498. In the alternative, inquiries may be directed to Stephanie Ramirez-Ridgeway at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-3675 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulations available for at least 15 days before the date the regulations are permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

GC section 19800 vests with the SPB jurisdiction and responsibility of establishing and maintaining personnel standards on a merit basis and administering merit systems for local government agencies where such merit systems of employment are required by statute as a condition of a state-funded program or a federal grant-in-aid program established under the following federal laws: Social Security Act, as amended; the Public Health Service Act; and the Federal Civil Defense Act, as amended.

GC section 19803 requires the SPB, by regulation, to establish and maintain personnel standards on a merit basis for local agencies (including therein standards of qualifications, competency, education, experience, tenure, and compensation) necessary for proper and efficient administration, and to assure state conformity with applicable federal requirements, for the purposes of administration of state or federally supported programs under Section 19800.

GC section 19803 provides that the merit system for employees engaged in administering programs under Section 19800 in a local agency not administering its own merit system approved under Section 19802, shall be administered by the SPB. This may include, but is not limited to, recruitment, examination, certification, appointment and other transactions, position classification, compensation standards, and disciplinary actions. As part of such administration, the SPB shall hear and decide appeals of any applicant for employment or officer or employee from the decision of a local agency or the SPB's executive officer affecting the employment rights of such persons.

2 CCR section 17463 (Order of Eligible Lists), currently specifies that if fewer than five names of persons willing to accept appointment are on a list, additional eligibles shall be certified from the list or lists next in order until five names are certified. This is commonly known as the "Rule of Five."

2 CCR section 17470 (Certification of Names), currently specifies that the SPB's Executive Officer shall certify to the appointing authority the names and addresses of the five persons who stand highest on the Eli-

gible List for the class to which the position belongs and who have indicated a willingness to accept the conditions of employment. The number of names to be certified to the appointing authority shall be on the basis of the number of appointments to be made plus four, except that when the score for the last certifiable name on an Eligible List is the same as one or more scores following it, all names having that same score shall be certified.

2 CCR section 17519 (Reemployment Lists from Other Departments Covered by These Regulations), currently specifies that where there exists a reemployment list for the same class for another department covered by these rules in the same local agency, the SPB's Executive Officer may require the use of the reemployment list to fill vacancies.

The purpose of the proposed regulations is to change from five to ten the number of eligible persons that may appear on a local agency Certification List. Existing regulations do not provide sufficient numbers of eligible persons to select from for hiring purposes, thereby creating unnecessary duplication of recruitment and selection efforts to identify the best qualified candidates for the hiring department.

As a result, 2 CCR sections 17463, 17470, and 17519 will have to be revised to allow the SPB Executive Officer to provide departments with a certification list containing the names of ten persons rather than five persons. This is commonly known as the "Rule of 10."

IMPACT ON SMALL BUSINESSES

It is anticipated that the proposed amendments will have no impact on small businesses, as the regulations apply strictly to the employment of civil service employees by local governmental entities.

LOCAL MANDATE

SPB has determined that the proposed action imposes no additional mandate on local agencies or school districts and, therefore, requires no reimbursement pursuant to GC section 17561.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies:

The proposed regulations will involve no additional costs to any state agency. It is anticipated that the proposed regulations will enable Merit agencies to select from ten eligible candidates instead of five for purposes of interviewing and hiring.

Impact on Housing Costs:

No impact.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

No impact.

Cost Impact on Private Persons or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**ASSESSMENT OF POTENTIAL ADVERSE
ECONOMIC IMPACT ON BUSINESS**

The proposed action will not have a significant, state-wide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT REGARDING THE
EFFECT ON JOBS/BUSINESSES**

The adoption of the proposed action should neither create nor eliminate jobs in the state, nor result in the elimination or expansion of existing businesses in the state, nor create or expand businesses in the state.

ALTERNATIVES STATEMENT

SPB must determine that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed, or would be as effective as and less burdensome to affected persons than the proposed action.

FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law pursuant to GC section 11346.9, and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

**ACCESSING INFORMATION REGARDING THIS
RULEMAKING FILE ON THE STATE
PERSONNEL BOARD WEBSITE**

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.spb.ca.gov.

**TITLE 4. CALIFORNIA HORSE
RACING BOARD**

CALIFORNIA CODE OF REGULATIONS

**NOTICE OF PROPOSAL TO AMEND
RULE 1865. ALTERING OF SEX OF HORSE**

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1865, Altering of Sex of Horse, to provide that the trainer shall be responsible for ensuring the true sex of a horse he entered to race, or caused to be entered to race, is entered on the certificate of registration on file in the racing office. If the true sex of the horse is not correctly identified in the official program for the race in which it is entered, the trainer shall be subject to a minimum fine of \$1,000 absent mitigating circumstances.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Wednesday, October 15, 2008**, or as soon after that as business before the Board will permit, at the **Arca-dia City Hall, 240 West Huntington Drive, Arca-dia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on October 13, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6022
E-Mail: harolda@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19460 and 19562, Business and Professions (B&P) Code.

Reference: Section 19420 and 19562, B&P Code.

B&P Code Sections 19420, 19440, 19460 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific Section 19420 and 19562, B&P Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions (B&P) Code Section 19420 states jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board (Board). B&P Code Section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. B&P Code Section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in California.

During fiscal year 2006/07 the stewards at California racetracks issued 44 rulings against trainers who did not report the gelding of a horse by time of entry. The failure to report, or untimely reporting of a first time gelding is an ongoing problem. The Board has attempted to address the issue with the assistance and cooperation of examining veterinarians, horse identifiers, racing office personnel and horsemen's groups, but all efforts failed to completely solve the problem and provide information regarding a horse's true sex to the public in a timely manner. Many changes to a horse's sex are not detected until the day of the race in which such horse is entered — too late to be useful information for the wagering public. This is an important issue to many horse racing fans, as they rely on full disclosure of a horse's condition in placing wagers. Many fans believe that a recent

change in a horse's sex (gelding/castration) can affect the performance of the horse, and lack of such information may cause fans to place wagers they otherwise would not.

The proposed amendment to Board Rule 1865 adds a new Subsection 1865(d), which holds the trainer responsible for reporting the true sex of a horse he entered, or caused to be entered, if the true sex was different from that listed on the certificate of registration on file in the racing office. Holding the trainer responsible is a logical extension of Board Rule 1887, Trainer to Insure Condition of Horse, which states the "...trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties. ..." Under a new Subsection 1865(d)(1), if the true sex of the horse is not correctly identified in the official program for the race in which the horse is entered, the trainer shall be subject to a minimum fine of \$1,000. Subsection (d)(2) allows for deviation from the minimum fine if the trainer can demonstrate mitigating circumstances. Occasionally, other parties make mistakes despite the trainer having correctly identified the true sex of the horse. An example of mitigating circumstances is provided in subsection (d)(2)(A); however, there may be other mitigating circumstances.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1865 will not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1865 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1865 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed texts of the regulations, the initial statement of reasons, the modified texts of the regulations, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed texts of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **October 16, 2008**, at
10:00 a.m.

in the Auditorium of the Harris
State Building,
1515 Clay Street,
Oakland, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **October 16, 2008**,
following the Public Meeting,
in the Auditorium
of the Harris State Building,
1515 Clay Street,
Oakland, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **October 16, 2008**,
following the Public Hearing,
in the Auditorium
of the Harris State Building,
1515 Clay Street,
Oakland, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on October 16, 2008.

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4,
Article 11
Sections 1598 and 1599
Use of High Visibility Apparel
2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7,
Article 7
Section 3328
**Machinery and Equipment—
Definition of “Equipment”**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4,
Article 11
Sections 1598 and 1599
Use of High Visibility Apparel

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking is the result of the Occupational Safety and Health Standards Board (Board) staff's evaluation of Section 1598 pertaining to traffic control for public streets and highways and Section 1599 pertaining to flaggers. These standards incorporate by reference traffic control requirements contained in the September 26, 2006, California Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways published by the California Department of Transportation (CalTrans) and hereinafter referred to as the “Manual”. The Manual contains requirements that address high visibility apparel (HVA) and references the American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107-1999 standard on HVA which was revised in 2004.

Sections 1598 and 1599 contain general specifications for high visibility apparel color, but do not reference the comprehensive ANSI/ISEA 107 HVA requirements contained in the Manual. Sections 1598 and 1599 are silent with regard to the design, testing, labeling, selection, use, care, and construction of high visibility apparel which is discussed extensively in the ANSI/ISEA 107 standard. The proposal is put forward for a number of reasons: (1) the proposal will update the Title 8 standard to conform with equivalent portions of the current national consensus standard, ANSI/ISEA 107–2004, and thereby enhance safety, (2) the Federal Highway Administration has published a Final Rule, effective November 28, 2008, and this Final Rule references ANSI/ISEA 107–2004, and (3) CalTrans anticipates that the Manual will be amended to reference the ANSI/ISEA 107–2004. In fact, this proposal is consistent with a request received from CalTrans personnel in March of this year asking that the Title 8 provision be amended in essentially the same manner as set forth in this proposal. The proposal would ensure workers on California’s public roads and highways are provided with and wear HVA that maximizes their visibility at work and reduces the possibility of being struck by a vehicle.

This proposal also addresses the wearing of white outer garments during snow or fog conditions during hours of darkness.

Board staff has discussed the proposal with a representative from CalTrans, Traffic Operations Unit, who was involved in the development of the Manual and learned that CalTrans intends to update the Manual’s reference to the ANSI/ISEA 107 standard to the 2004 edition in 2010 after the FHWA/USDOT revises the federal MUTCD in 2009. Board staff also learned that CalTrans has no objections to or concerns about the proposed amendments in this proposal.

Therefore, the following actions are proposed:

Section 1598. Traffic Control for Public Streets and Highways.

This Section addresses workers “struck-by” hazards posed by vehicular traffic or haulage conditions at worksites and addresses issues such as, but not limited to, utilization of traffic controls methods in accordance with the Manual and the use and design of high visibility apparel.

Amendments are proposed to subsection (c) to reference and incorporate by reference the ANSI/ISEA 107–2004, High Visibility Safety Apparel and Headwear standard thus requiring that all such garments be worn in accordance with this standard. Further amendments are proposed to delete unnecessary language relating to garment colors and rainwear which is redun-

dant and/or inconsistent with the ANSI/ISEA 107–2004 standard.

The proposed amendments will clarify to the employer the standards that apply to high visibility safety attire, including rainwear, consistent with the ANSI/ISEA 107–2004 standard and high visibility safety apparel standards to be referenced in State and Federal transportation regulations.

Amendments are proposed for subsection (d) to require that retroreflective warning garments meet the requirements of the ANSI/ISEA 107–2004, High Visibility Safety Apparel and Headwear standard, which is to be incorporated by reference, and to prohibit the use of white outer garments with retroreflective material during hours of darkness in snow or fog conditions.

The proposed amendments will clarify to the employer the standards that apply to high visibility safety attire including retroreflective warning garments that are worn during hours of darkness, consistent with the ANSI/ISEA 107–2004 standard and standards to be contained in State and Federal transportation regulations. This proposal will ensure that employees are attired in such a way to maximize their visibility.

An amendment is proposed to subsection (d) to delete the requirement that retroreflective clothing or the retroreflective material added to the clothing must have a minimum of one horizontal stripe around the torso. This issue of retroreflective clothing and material contained in subsection (d) is outdated and is addressed in the ANSI/ISEA 107–2004 standard.

This proposal will clarify to the employer that standards/specifications for retroreflectivity are those contained in the ANSI/ISEA 107–2004 standard which maximizes workers’ visibility.

Section 1599. Flaggers.

This Section contains standards pertaining to the use of flaggers at construction job sites and addresses issues such as, but not limited to, use of flaggers when other means of traffic control cannot be used, placement of warning signs in accordance with the Manual, and the use of high visibility warning apparel for daytime and hours of darkness contained in subsections (d) and (e), respectively.

Amendments to subsections (d) and (e) are proposed to incorporate by reference the requirements of the ANSI/ISEA 107–2004 standard for high visibility safety apparel and headwear. Further amendments are proposed to delete unnecessary language relating to garment colors and rainwear in subsection (d) which is redundant and/or inconsistent with the ANSI/ISEA 107–2004 standard.

The proposal will clarify to the employer the standards that apply to high visibility safety apparel, includ-

ing rainwear, consistent with the ANSI/ISEA 107–2004 standard and standards to be contained in State and Federal transportation regulations.

An amendment is proposed to subsection (e) to delete the requirement that retroreflective clothing or the retroreflective material added to the clothing must have a minimum of one horizontal stripe around the torso. This issue of retroreflective clothing and material contained in subsection (d) is outdated and is addressed in the ANSI/ISEA 107–2004 standard. This proposal will remove outdated language and be consistent with the ANSI/ISEA 107–2004 standard which maximizes workers’ visibility.

Furthermore, an amendment is proposed in subsection (e) to prohibit the use of white outer garments during hours of darkness in snow or fog conditions. This proposal will ensure that employees are attired in such a way to maximize their visibility.

DOCUMENT INCORPORATED BY REFERENCE

American National Standards Institute (ANSI)/International Safety Equipment Association (ISEA) 107–2004, High Visibility Safety Apparel and Headwear, Sections 1–12 and Appendices A, B and C.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107–2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107–2004 standard.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to com-

pete with businesses in other states. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107–2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107–2004 standard.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107–2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107–2004 standard.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All state, local, and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. Most high visibility garment manufacturers already fabricate their garments in accordance with the specifications contained in the ANSI/ISEA 107–2004 standard and they are commercially and readily available. In addition, employers are for the most part providing employees exposed to traffic hazards with garments that meet the ANSI/ISEA 107–2004 standard.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 7

Section 3328

**Machinery and Equipment—
Definition of “Equipment”**

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated as a result of the Decision after Reconsideration (DAR) issued in Occupa-

tional Safety and Health Appeals Board (OSHAB) Docket No. 99–RID3–786, regarding an appeal initiated by the Herrick Corporation. In that decision, the OSHAB relied on a dictionary definition of the word “equipment” in deciding that a temporary shoring column constituted “equipment” as that term is used at California Code of Regulations, Title 8, Section 3328. This rulemaking is undertaken so that an appropriate definition of the term “equipment” will be stated in Section 3328. With the addition of such a definition to the safety order, neither regulators nor the regulated public will have to speculate as what dictionary definition should be used in determining the meaning of “equipment,” as that term is used in the standard. More significantly, neither regulators nor the regulated public will have to speculate as to the scope of the standard’s applicability, which is determined in large part by the definition of “equipment.”

Section 3328 contains various requirements regarding the design, use, operation, inspection, installation, modification, repair and maintenance of machinery and equipment. The standard does not define “equipment,” and no such definition applicable to Section 3328 is set forth in Title 8. This proposal adds a new subsection (i) to Section 3328. That subsection proposes a definition of “equipment” that is consistent with the definition relied on in the DAR. The proposal thereby clarifies the meaning of an important term used in Section 3328, and in doing so, the proposal clarifies the applicability of the safety order’s requirements.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing

businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274–5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than August 15, 2008. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on October 16, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274–5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes

may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 9. DEPARTMENT OF REHABILITATION

Title 9. Rehabilitative and Developmental Services Division

Division 3. Department of Rehabilitation

NOTICE OF INTENTION TO AMEND A CONFLICT OF INTEREST CODE

NOTICE IS HEREBY GIVEN

The Department of Rehabilitation proposes to amend its existing Conflict of Interest Code, Section 7400 of Title 9, Division 3, Chapter 14, Article 1 of the California Code of Regulations described below after considering all comments, objections, or recommendations.

PUBLIC HEARING

No public hearing has been scheduled. Any interested person or his/her duly authorized representative may make a written request for a public hearing pursuant to Title 2, California Code of Regulations, Section 18750. The written request to hold a public hearing must be received by the contact person identified in this notice no later than 15 days prior to the close of the written comment period. The Department shall, to the extent practicable, provide notice of the time, date and place of the hearing by mailing the notice to every person who submitted written comments, or who requested a hearing, on the proposed amendments.

WRITTEN COMMENT PERIOD

Any interested party may submit written comments relating to the proposed amendments during the 60-day public comment period. The public comment period begins on August 29, 2008 and closes at 5:00 p.m. on October 28, 2008. Written comments must be received by the Department by the close of the written comment pe-

riod for the comments to be considered. Comments must be directed to the contact person identified in this notice.

PUBLIC INSPECTION/COPYING

Pursuant to Title 2, California Code of Regulations, Section 18750, the Department shall make the express terms of the proposed amendments to its Conflict of Interest Code available to the public for inspection and copying upon request. Interested persons may inspect and copy the proposed amendments for at least 60 days prior to the close of the public comment period. The rulemaking file is available for public inspection during the Department's regular business hours (8:00 a.m. to 5:00 p.m.).

The rulemaking file is maintained at the Department of Rehabilitation, Office of Legal Affairs and Regulations, 721 Capitol Mall, 3rd Floor, Sacramento, California 95814. Requests for public inspection and copying can be directed to the contact person identified in this notice.

Pursuant to Title 2, California Code of Regulations, Section 18750, copies of this Notice of Intention to Amend a Conflict of Interest Code have been posted in several publicly accessible locations, specifically the Department's Internet website at <http://www.dor.ca.gov>, the central office in Sacramento, California and all other Department district and branch offices.

AUTHORITY AND REFERENCE

Authority: Government Code Section 87306.

Reference: Government Code Sections 87300-87302 and 87306.

INFORMATIVE DIGEST

The Political Reform Act (Act), Government Code Section 81000 et seq. became operative in 1975. Pursuant to Section 81002 of the Act, the legislative intent, in part, is that assets and income of public officials that may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting so that conflicts of interest may be avoided.

Government Code Section 87300 requires that every agency adopt and promulgate a Conflict of Interest Code. Government Code Section 87302 requires that each agency's Conflict of Interest Code ("agency code") designate specific positions within the agency, other than those specified in Section 87200, which make or participate in the making of decisions which may foreseeably have a material effect on any financial interest. The agency code must require that each desig-

nated position report interests in accordance with their assigned disclosure categories. The disclosure categories specify the specific types of investments, business positions, interests in real property, and sources of income which are reportable. Specific types of interests such as an investment, business position, interest in real property, or source of income shall be made reportable under the agency code if the business entity in which the investment or business position is held, the interest in real property, or the income or source of income may foreseeably be materially affected by any decision made or participated in by the designated employee. Each individual whose position is designated in the Conflict of Interest Code is required by law to file a Statement of Economic Interests (Form 700).

Pursuant to guidelines set forth by the California Fair Political Practices Commission (FPPC), the Department's Conflict of Interest Code contains two basic parts. The first part contains the body of the Department's code, incorporated from the model Conflict of Interest Code contained in the FPPC's regulations in Title 2, California Code of Regulations, Section 18730. Section 18730 contains such information as the procedure for filing Form 700s, the manner of reporting financial interests, and the method to be used by a designated employee when he/she is required to disqualify him/herself from participating in a decision. The second part of the Department's Conflict of Interest Code lists designated positions required to file a Form 700 and the applicable disclosure category or categories for the position in the Appendix.

Pursuant to Government Code Section 87306, every agency shall amend its Conflict of Interest Code, subject to the provisions of Section 87303, when amendment of the code is necessitated by changed circumstances, including the creation of new positions which must be designated pursuant to Section 87302 subdivision (a) and changes in the duties assigned to existing positions or changes to existing positions disclosure categories. Accordingly, the Department is amending its Conflict of Interest Code at this time to reflect a Department-wide reorganization.

SUMMARY OF PROVISIONS OF THE EXISTING CODE AND THE EFFECT OF PROPOSED AMENDMENTS

The Department is amending Title 9, California Code of Regulations, Section 7400. These amendments are summarized as follows:

1. The existing code reflects the Departmental organization of divisions and units as they existed in 1999. These proposed amendments reconfigure, rename, delete, and reorganize divisions and units within the Department, as appropriate, consistent with the Department's organizational chart submitted with the proposed amendments to the Conflict of Interest Code.
2. The Department's existing code reflects a list of positions within the divisions and units as they existed in 1999. These proposed amendments: 1) add newly created positions and disclosure categories; 2) amend positions that existed in 1999 where the disclosure categories have changed; 3) delete positions that no longer exist, along with the corresponding disclosure categories; and 4) revise names of positions to reflect current titles or classifications under the current reorganization, and amend disclosure categories for those positions, if any change was made to the disclosure category.

The Department has prepared a written explanation of the reasons for the amendments to its Conflict of Interest Code in the form of a "Written Explanation of Reasons for Amendment." This document and all of the information upon which the proposed amendments are based is available from the contact person identified in this notice.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has determined that the proposed amendments to its Conflict of Interest Code:

Will not impose a cost or savings on any state agency, local agency, or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses, including small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Title 2, California Code of Regulations, Section 18750, the Department must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action

is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Department invites interested persons to present written statements or arguments with respect to alternatives to the proposed amendments to the Conflict of Interest Code during the written comment period.

CONTACT PERSON

Inquiries regarding the proposed amendments to the Department's Conflict of Interest Code or requests for copies of the proposed amendments to the Conflict of Interest Code, the written explanation of reasons for changes and/or other information upon which the proposed amendments to the Conflict of Interest Code is based shall be directed to:

Joely Walker, Executive Assistant
Department of Rehabilitation
Office of Legal Affairs and Regulations
721 Capitol Mall, 3rd Floor
Sacramento, CA 95814
Telephone: (916) 558-5825
FAX: (916) 558-5826
TTY: (916) 558-5807
Email: jawalker@dor.ca.gov

AVAILABILITY OF MODIFIED TEXT

If the proposed amendments to the Department's Conflict of Interest Code are modified prior to adoption and the change is not solely grammatical or non-substantive in nature, the full text of the modified amendments to the Conflict of Interest Code, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption. The text will be posted at sites specified above under the Public Inspection/Copying section in this notice. Copies of the modified amendments to the Conflict of Interest Code may be obtained on request from the contact person identified in this notice. The Department will accept written comments on the modified amendments to the Conflict of Interest Code for 15 days after the date on which they are made available. The Department may thereafter adopt the proposed amendments to the Conflict of Interest Code as set forth herein without further notice.

TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

January 1, 2009 Workers' Compensation Pure Premium Rates

File No. REG-2008-00027

Notice Date: August 29, 2008

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective January 1, 2009.

NOTICE AND SUBJECT OF PUBLIC HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization, (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, (3) amendments to the Miscellaneous Regulations for the Recording and Reporting of Data, and (4) amendments to the California Workers' Compensation Experience Rating Plan—1995. The hearing will be held in response to a filing, submitted on August 15, 2008, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB").

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

September 16, 2008—1:00 p.m.
California Department of Insurance
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the Insurance Commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the Insurance Commissioner. Accordingly, the pure premium rates issued or approved by the Insurance Commissioner are advisory only.

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the Insurance Commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner 30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that

the data produced by the insurer's classification system can be reported consistently with the California Workers' Compensation Uniform Statistical Reporting Plan—1995 or the Standard Classification System developed by the WCIRB and approved by the Insurance Commissioner.

The pure premium rates recommended by the WCIRB to be effective January 1, 2009, as well as amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995, are detailed in the WCIRB's filing and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective January 1, 2009 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2009. The proposed advisory pure premium rates are, on average, 16.0% greater than the January 1, 2008 advisory pure premium rates approved by the Insurance Commissioner.

The proposed pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2009 are based on (a) insurer losses incurred during 2007 and prior accident years valued as of March 31, 2008; (b) insurer loss adjustment expenses for 2007 and prior years; (c) the projected policy year 2009 experience rating off-balance correction factor, and (d) classification payroll and loss experience reported for policies incepting in 2005 and prior years.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN—1995

The WCIRB recommends that the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 become effective January 1, 2009 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2009, except as otherwise noted below.

- Amend Part 2, *Policy Document Filing Requirements*, Section I, *General Instructions*, Rule 1, *Policies*, paragraph a, *New and Renewal Policies*, subparagraph (2)(d), to eliminate the optional Social Security Number reporting requirement for policyholders that do not have an FEIN, due to privacy concerns.

- Amend the minimum and maximum annual payroll for executive officers, partners, individual employers, and members of a limited liability company to increase the maximum from \$92,300 to \$94,900 and the minimum from \$35,100 to \$36,400, as well as to other payroll limitations relevant to specific classifications (e.g., athletic teams, entertainment classifications, taxicabs, etc.), to reflect wage inflation since the last time these amounts were amended January 1, 2008.
- Amend Part 3, *Standard Classification System*, Section VII, *Standard Classifications*, Rule 1, *Classification Section*, paragraph a, *Industry Groups*, to reflect the proposed establishment of *Metal Working Classifications* as an industry group.
- Amend the dual wage classifications noted below to increase the wage threshold by \$1.00 to reflect wage inflation since the last time the wage thresholds were amended.
 - Automatic Sprinkler Installation*, Classifications 5185/5186
 - Carpentry — private residences*, Classifications 5645/5697
 - Carpentry — other*, Classifications 5403/5432
 - Concrete or Cement Work*, Classifications 5201/5205
 - Electrical Wiring*, Classifications 5190/5140
 - Excavation/Grading Land/Land Leveling*, Classifications 6218/6220
 - Gas/Water Mains*, Classifications 6315/6316
 - Glaziers*, Classifications 5467/5470
 - Masonry*, Classifications 5027/5028
 - Painting/Waterproofing*, Classifications 5474/5482
 - Plastering or Stucco Work*, Classifications 5484/5485
 - Roofing*, Classifications 5552/5553
 - Sewer Construction*, Classifications 6307/6308
 - Sheet Metal Work*, Classifications 5538/5542
 - Steel Framing — light gauge — residential*, Classifications 5630/5631
 - Steel Framing — light gauge — commercial*, Classifications 5632/5633
 - Wallboard Application*, Classifications 5446/5447
- Eliminate Classification 3076(5), *Cabinet or Enclosure Mfg. — metal*, as its constituents are more accurately described by other existing standard classifications.
- Eliminate Classification 2623(2), *Fur Mfg. — preparing skins*, due to inadequate statistical credibility.
- Eliminate Classification 2623(3), *Hide Processing or Preserving*, due to inadequate statistical credibility.
- Establish Classification 2586(3), *Hide or Fur Cleaning, Processing or Preserving*, as an alternate wording to Classification 2586(1), *Dry Cleaning or Dyeing — N.O.C.*
- Establish an industry group for *Metal Working Classifications*.
- Eliminate Classification 2106(1), *Olive Handling — sorting, curing, packing and canning — including olive oil manufacturing*, due to inadequate statistical credibility, and establish Classification 2111(2), *Olive Handling — sorting, curing, packing and canning*, to be an alternate wording to Classification 2111, *Canneries — N.O.C.*
- Amend Classification 0016, *Orchards — citrus and deciduous fruits*, to indicate that Classification 0016 applies to acreage devoted to olives.
- Eliminate Classification 2106(2), *Pickle Mfg.*, due to inadequate statistical credibility and establish Classification 2111(3), *Pickle Mfg.*, as an alternate wording to Classification 2111, *Canneries — N.O.C.*
- Eliminate Southern California Rapid Transit District Metro Rail Redline Project, Classification 6254, *Subway Construction — all operations*, due to inadequate statistical credibility.
- Eliminate Classification 2623(1), *Tanning*, due to inadequate statistical credibility.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section I, *General Instructions*, Rule 8, *Excess Policies*, to eliminate the unit statistical report filing requirements for excess insurance policies since these requirements are obsolete.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section II, *Definitions*, Rule 11, *Final Premium(s)*, to reflect the name of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and to address the reporting requirements for the new provisions in Insurance Code Section 11760.1.

- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section III, *Policy Information (Header)*, Rule 23, *Policy Type ID Codes (Policy Type ID)*, to eliminate the unit statistical report filing requirements for excess insurance policies since these requirements are obsolete.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section III, *Policy Information (Header)*, Rules 24 through 27, to facilitate the collection of deductible indicator information and to clarify its intended application.
- Amend Part 4, *Unit Statistical Report Filing Requirements*, Section V, *Loss Information*, Subsection B, *Loss Data Elements*, Rule 13, *Social Security Number (Social Security Number)*, to eliminate the Social Security Number reporting requirement due to privacy concerns. This change is proposed to be effective with respect to claims required to be valued on or after January 1, 2009.
- Amend Appendix V, *Required Loss Fields for Particular Injury Types and Types of Claims*, to eliminate the Social Security Number reporting requirement due to privacy concerns. This change is proposed to be effective with respect to claims required to be valued on or after January 1, 2009.
- Amend for clarity and consistency.

AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA

The WCIRB recommends that the following revision to the Miscellaneous Regulations for the Recording and Reporting of Data become effective January 1, 2009 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2009.

- Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 2, *Effective Date*, to be consistent with the effective date of the California Workers' Compensation Uniform Statistical Reporting Plan—1995 for ease of reference.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995

The WCIRB recommends that the following revisions to the California Workers' Compensation Experience Rating Plan—1995 become effective January 1, 2009 with respect to new and renewal policies as of the

first anniversary rating date of a risk on or after January 1, 2009.

- Amend Section II, *Definitions*, Rule 2, *Base Premium*, to reflect the name of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Amend Section III, *Eligibility and Experience Period*, Rule 1, *Eligibility Requirements for California Workers' Compensation Insurance*, to adjust the eligibility requirement from \$14,300 to \$17,300 to reflect wage inflation and to reflect the changes in the pure premium rates proposed in this filing.
- Amend Section V, *Application of Experience Modification*, Rule 6, *Experience Modification Corrections — Effective Dates*, to correct the citation to the Revisions of Losses rule.
- Amend Section VI, *Tabulation of Experience*, Rule 4, *Losses*, paragraph a, to correct the sequence of referenced paragraphs and rules, and paragraph 1 to reflect the name of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Amend Section VI, *Tabulation of Experience*, Rule 11, *Terrorism Claims*, to reflect the name of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Amend the expected loss rates and D-ratios shown in Table II, *Expected Loss Rates and Full Coverage D-Ratios*, to reflect the most current data available.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by insurance companies. To the extent they are adopted, they may result in higher costs.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner has determined that there may be a cost increase, and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations may have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations may have a significant effect on private persons or entities.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

(916) 492-3187
(916) 324-1883 (FAX)
citkoc@insurance.ca.gov

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address, FAX number, or email address listed above no later than 5:00 p.m. on Tuesday, September 23, 2008.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE-MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 300 Capitol Mall, 17th Floor, Sacra-

mento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

REG-2007-00034

August 13, 2008

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING REVISIONS TO CALIFORNIA AUTOMOBILE ASSIGNED RISK PLAN

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to address the proposed amendment to Rules 24 and 55 of the California Automobile Assigned Risk Plan (CAARP) Manual of Rules and Rates.

AUTHORITY TO ADOPT RATES AND PROCEDURES AND REFERENCE

The Commissioner will consider the proposed changes pursuant to the authority vested in him by Section 11620 of the California Insurance Code. The Commissioner's decision on the proposed changes will implement, interpret, or make specific the requirements of Insurance Code Section 11624(e). Government Code §11340.9(g) applies to this proceeding.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed changes at the following date, time, and place:

Date and Time: **October 24, 2008**
10:00 a.m.

Location: **California Department of Insurance**
45 Fremont Street
22nd Floor Hearing Room
San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposal prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mike Riordan, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Sara Urakawa, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
urakawas@insurance.ca.gov
Telephone: (415) 538-4121
Facsimile: (415) 904-5490

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on October 24, 2008**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Please select only one method to submit written comments.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST

CAARP has proposed revisions to Rules 24 and 55 to clarify the application of additional charges for private passenger and commercial insureds. Several insurers complained that the rule was being applied inconsis-

tently and were concerned that the conflicting and confusing interpretations on the proper application of additional charges lead to similarly situated insured's being treated in a dissimilar manner.

Rules 24 and 55 provide instructions for assigning penalty points for multi-auto risks to the highest rated auto to a maximum of 12 penalty points. The additional charges are dollar amounts added to the vehicle premiums. Any remaining penalty points are applied to the next highest rated auto to a maximum of 12 penalty points per auto until all remaining penalty points are used. The Plan found that assigning additional charges to the highest rated auto confused producers because the premium did not vary by assigning additional charges to the highest rated auto. Also, when producer seminars were conducted, the producers are instructed to apply additional charges to each auto in succession and no consideration is given to the highest rated auto.

CAARP is requesting changes to Rules 24 and 55 to clarify the application of additional charges. The provision will specify that single auto risks are subject to a maximum of 12 penalty points. It will clarify that only 12 penalty points are applied to the first auto and to the next autos in succession in lieu of the highest rated auto. Finally the proposed changes will clarify that only 12 penalty points are applied either per auto or per driver depending on the type of risk.

The revisions will assure uniformity among the carriers in rating risks written throughout the Plan.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO ANY STATE
AGENCY; FEDERAL FUNDING

The Commissioner has determined that the proposed regulation will result in no cost or savings to any state agency and no cost or savings in federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES
AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE

The Commissioner has initially determined that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS
OR ENTITIES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

IMPACT ON SMALL BUSINESS

The matter proposed herein will affect insurance companies and therefore will not affect small business. (Gov. Code Section 11342.610(b)(2)).

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

ALTERNATIVES

The Insurance Commissioner must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying

out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PLAIN ENGLISH

The proposed changes describing CAARP's proposals are in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons addressing the proposed amendment in addition to the Informative Digest included in this notice. The Initial Statement of Reasons and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to the contact person listed above. Further details on CAARP's proposal are on file with the Commissioner and available for review as set forth below.

FINAL STATEMENT OF REASONS

A final statement of reasons will be prepared at the conclusion of this proceeding. Upon written or e-mail request to the contact person listed above, the final statement of reasons will be made available for inspection and copying once it has been prepared. A copy of the final statement of reasons will also be posted on the Department's web site.

ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of or direct questions about CAARP's proposed amendments, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact person listed above. **By prior appointment**, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

The Initial Statement of Reasons, proposed text, and this Notice of Proposed Action will be published online

and may be accessed through the Department's website at www.insurance.ca.gov.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION

Amend Regulations 1005, 1007, and 1008, and update the *Training and Testing Specifications for Peace Officer Basic Courses*

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Public Comments Due by October 13, 2008, at 5:00 p.m.

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at 916.227.6932 or by letter to the:

Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Following the close of the public comment period, the Commission may adopt the proposal substantially as described below or may modify the original proposal with sufficiently related changes. With the exception of technical or grammatical changes, the full text of a modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person. The Commission will also mail the full text to persons who submit written comments related to the proposal or who have requested notification of any changes.

Authority and Reference

This proposal is made pursuant to the authority vested by Penal Code § 13503 — POST powers and § 13506 — POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code §13503(e) — POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At its July 24, 2008 meeting, the Commission approved proposed amendments to Learning Domains throughout the *Training and Testing Specifications for Peace Officer Basic Courses* publication, incorporated by reference into POST Regulations 1005, 1007, and 1008. The proposed changes included:

- Standardize skills testing for the Basic Course
- Update Training & Testing Specification curriculum as part of an ongoing review

All changes to academy curriculum begin with recommendations from law enforcement practitioners or, in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and SMEs who provide recommended changes to existing academy curriculum. These recommendations are then submitted to the Consortium Advisory Committee (CAC), chaired by POST personnel and comprised of academy directors and coordinators. The CAC approved recommendations are then submitted for review by all academies at the Basic Course Consortium quarterly meetings facilitated by POST. Once approved by majority vote of all academies, the recommendations are forwarded to a Test Review Panel, also comprised of academy administrators that identify testing questions and pass point thresholds for the new curriculum. The completed work of all committees is then submitted to the POST Commission for final review. In addition to amending the learning domains for the aforementioned reasons, the SMEs also propose non-substantial changes at the same time to improve clarity and readability of the domains.

Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test to the updated curriculum. The proposed effective date is January 1, 2009.

Local Mandate

This proposal does not impose a mandate on local agencies or school districts,

Fiscal Impact Estimates

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with

§17500) of the Government Code, Division 4. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

Costs or Savings to State Agencies

POST anticipates no additional costs or savings to state agencies.

Business Impact/Small Businesses

The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses, as defined by Government Code §11342.610, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

Assessment Regarding Effect on Jobs/Businesses

The Commission has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs and will not result in the creation of new businesses, the elimination of existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Persons or Businesses

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs

None

Alternatives

The Commission must determine that no reasonable alternative considered by the agency, or otherwise identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as, and less burdensome to, affected private persons than the proposed action.

Contact Person

Please direct inquiries or written comments about the proposed regulatory action to the following:

Julie Hemphill
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083
916.227.0544 or julie.hemphill@post.ca.gov
FAX 916.227.6932

or

Connie Paoli
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083
916.227.4854 or connie.paoli@post.ca.gov
FAX 916.227.5271

Text of Proposal

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 1601 Alhambra Boulevard, Sacramento, CA 95816. These documents are also located on the POST website at: www.post.ca.gov/RegulationNotices/Regulation.asp.

Availability and Location of the Rulemaking File and the Final Statement of Reasons

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person named above.

To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person named above.

TITLE 20. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

NOTICE OF PROPOSED ACTION

PROPOSED AMENDMENTS TO APPLIANCE EFFICIENCY REGULATIONS California Code of Regulations, Title 20, Sections 1601 Through 1608

CALIFORNIA ENERGY COMMISSION Docket Number 08-AAER-1B

August 29, 2008

INTRODUCTION

The California Energy Commission (Energy Commission) proposes to amend its Appliance Efficiency Regulations. The purpose of this rulemaking is to adopt efficiency standards for metal halide lighting fixtures (luminaires), a comprehensive voluntary test procedure for battery charger systems, clarification of the current regulations for residential pool pumps (including clarification of the current test method for portable electric spas), requirement that replacement motors for existing residential pool pump equipment must be two-speed or

multispeed motors, and necessary updates and revisions to the overall Appliance Efficiency Regulations for consistency with current federal laws.

Improved lighting standards for metal halide luminaires address the Energy Commission's expressed priority to carry out the mandates established in Assembly Bill 1109 (Huffman, Chapter 534, Statutes of 2007) (AB 1109). AB 1109 requires the Energy Commission to adopt minimum energy efficiency standards for general purpose lighting that, in combination with other programs and activities, reduce average statewide electrical energy consumption by not less than 50 percent from 2007 levels for indoor residential lighting and not less than 25 percent from the 2007 levels for indoor commercial and outdoor lighting by 2018. Additional savings from improved efficiency of metal halide luminaires will contribute toward reductions in commercial indoor lighting and outdoor lighting. In a parallel and separate rulemaking (Docket 08-AAER-1A) the Energy Commission intends to adopt lighting efficiency standards for general service lamps and for portable lighting fixtures as part of the AB 1109 mandate to set new efficiency standards for general purpose lighting by December 31, 2008.

At the federal level, the Energy Independence and Security Act of 2007 (EISA 2007) was signed into law December of 2007 and includes new and revised energy efficiency standards and other requirements related to lighting efficiency, power supplies and many other appliance categories currently included in California's Appliance Efficiency Regulations. The EISA 2007 included specific provisions for California to update its standards for metal halide luminaires and direction to the U.S. Department of Energy regarding battery charger systems test procedures and standards development. Given that federal laws preempt California's standards for federally regulated appliances, the broad revisions contained in the EISA 2007 require a comprehensive updating of California's Appliance Efficiency Regulations, including reference definitions, test methods, performance and prescriptive efficiency requirements, and data reporting.

The Energy Commission has prepared this Notice of Proposed Action (NOPA) and an Initial Statement of Reasons (ISOR) regarding the need for the proposed amendments. The Energy Commission has also published the Express Terms (45-Day Language) of the proposed amendment language. These documents can be obtained from the contact persons designated below or from the Energy Commission website at: [<http://www.energy.ca.gov/appliances>].

PUBLIC HEARINGS

The Energy Commission's Energy Efficiency Committee (Committee) will hold a public hearing on the following date to receive public comment on the Express Terms:

WEDNESDAY, SEPTEMBER 17, 2008

9:00 a.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Hearing Room A

Sacramento, California

(Wheelchair Accessible)

Audio for the September 17, 2008, Committee hearing will be broadcast over the Internet. Details regarding the Energy Commission's webcast can be found at: [www.energy.ca.gov/webcast]

At this hearing any person may present statements or arguments relevant to the proposed action. Interested persons may also submit written comments. If possible, please provide written comments to be considered at the Committee hearing by **September 15, 2008**. The Energy Commission appreciates receiving written comments at the earliest possible date.

PROPOSED ADOPTION DATE

The Energy Commission will hold a public hearing for consideration and possible adoption of the 45-Day Language on the following date unless the Energy Commission decides to modify the Express Terms through issuance of 15-Day language.

WEDNESDAY, OCTOBER 22, 2008

10 a.m.

California Energy Commission

1516 Ninth Street

First Floor, Hearing Room A

Sacramento, California

(Wheelchair accessible)

Audio for the October 22, 2008, adoption hearing will be broadcast over the internet.

If you have a disability and require assistance to participate in these hearings, please contact Lou Quiroz at (916) 654-5146 at least 5 days in advance.

At the hearings any person may present written or oral comments on the proposed amendments. Interested persons may also submit written comments. If possible, please provide written comments to be considered at the Committee hearing by **October 21, 2008**. The Energy Commission appreciates receiving written comments at the earliest possible date.

PUBLIC COMMENT PERIOD/WRITTEN COMMENTS

The public comment period for this NOPA will be from **August 29, 2008** through **October 13, 2008**. Any interested person may submit written comments on the proposed amendments. Written comments will still be accepted at the public Committee hearing and for the Energy Commission adoption hearing if they are received by 10:00 a.m. on **October 22, 2008**. Written comments shall be e-mailed to [Docket@energy.state.ca.us] or mailed or delivered to the following address (e-mailing is preferred):

California Energy Commission
Docket No. 08-AAER-1 B
Docket Unit
1516 Ninth Street, Mail Station 4
Sacramento, California 95814-5504

All written comments must indicate **Docket No. 08-AAER-1B**. When comments are e-mailed on behalf of an organization, the comments should be a scanned copy of the original on the organization's letterhead and include a signature of an authorized representative.

AUTHORITY AND REFERENCE

The Energy Commission proposes to adopt the amendments under the authority of Public Resources Code sections 25213, 25218(e), 25402(c)(1) and 25402.5.4. The proposed amendments implement, interpret, and make specific Public Resources Code sections 25402(c)(1).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law [Public Resources Code § 25402(c)] requires the Energy Commission to adopt regulations that prescribe minimum efficiency levels for appliances. The Energy Commission first adopted appliance efficiency regulations in 1976 and has periodically revised them since then. The current regulations include provisions on testing of appliances to determine their efficiency, reporting of data by manufacturers to the Energy Commission, standards establishing mandatory efficiency levels, and compliance and enforcement procedures, as well as general provisions on the scope of the regulations and definitions.

In the rulemaking proceeding that is the subject of this NOPA, the Energy Commission is proposing to amend the Appliance Efficiency Regulations to adopt improved efficiency standards for metal halide (MH)

luminaires, clarify the existing regulations for residential pool pump appliances, require that replacement motors for existing residential pool pump equipment must be two-speed or multispeed motors, clarify test method specifications for portable electric spas, add a voluntary comprehensive test procedure for battery charger systems, and revise and update the regulations as necessary for consistency with current federal law.

Metal Halide Luminaires

Public Resources Code section 25402.5.4 (added by AB 1109) expressly requires the Energy Commission to adopt statewide lighting efficiency standards to reduce residential and commercial lighting energy consumption by December 31, 2008. In AB 1109, the Legislature found energy consumption for lighting accounts for nearly 20 percent of the state's electricity demand. The energy efficiencies of existing lighting technologies vary significantly. The purpose of the efficiency standards for MH luminaires is to address the mandates for indoor commercial and outdoor lighting energy efficiency reduction requirements established by AB 1109. In a parallel and separate rulemaking (Docket 08-AAER-3A) the Energy Commission intends to adopt lighting efficiency standards for specified general purpose lighting and for portable lighting fixtures as part of the AB 1109.

The EISA 2007 established federal standards for metal halide fixtures that explicitly excludes California's existing MH fixture standards from preemption and provides the opportunity for the Energy Commission to adopt revised efficiency standards by January 1, 2011. The proposed standards for MH luminaires will require manufacturers to meet specific minimum ballast efficiency percentages on or after January 1, 2010 through a set of compliance options. The Energy Commission has found these standards to be technically feasible, necessary and cost effective.

Residential Pool Pumps and Portable Electric Spas

The Energy Commission adopted standards for residential pool pumps motors that became effective January 1, 2006, with increased stringency effective January 1, 2008. The standards require that pool pump motors be either two-speed or multi-speed motors and be operated using a multi-speed controller. The standards were drafted in such a way that the requirements only applied to new residential pool pump and motor combinations, but not to replacement residential pool pump motors installed on existing pumps. At the time the standards were originally proposed and adopted, the anticipated energy savings included replacing residential pool pump motors on existing pumps.

The Energy Commission is now proposing to amend the Appliance Efficiency Regulations to specify that existing residential pool pump motors be replaced with

either two-speed or multi-speed pump motors on existing pumps and that multi-speed controllers be used. The Energy Commission is also amending the Residential Pool Pump data collection requirements to help facilitate showing of compliance with the residential pool installation. In addition, a new marking requirement will be established stating on the two-speed or multi-speed motor that a multi-speed controller is required to help insure that the energy savings from the efficient pump cannot be lost through use of a single speed controller.

The explicit adoption of pool pump replacement motors in the scope of regulations is necessary to achieve the expected energy savings of 2004 rulemaking. Additional savings and compliance will be achieved by clarification of motor capacity and the addition of labeling requirements.

The Energy Commission has found these standards to be technically feasible, necessary and cost effective.

The Energy Commission is also proposing to amend its test method for portable electric spas. The suggested changes would: eliminate requirements for manufacturers to report the R (insulation) ratings of spa covers, define tolerances for ambient air temperature and water temperature, and alter the four hour stabilization period to be four or more hours. These amendments will provide manufacturers and test laboratories with superior test instructions and eliminate unnecessary testing expenses.

Battery Charger System Test Procedures

The Energy Commission has helped develop a test method for battery charging systems for small and medium sized battery chargers through the Public Interest Energy Research (PIER) Program. Ecos Consulting and the Electric Power Research Institute, funded by PIER and Pacific Gas and Electric Company (PG&E), completed a draft of this comprehensive test method for California in late 2007, after four years of research, drafting, stakeholder meetings, and public comments. Most recently, this test method has been further revised and a test method specifically for larger "motive" battery charger systems (e.g., electric vehicles and industrial type battery chargers) has been developed.

Currently, California's Appliance Efficiency Regulations do not include test procedures or efficiency standards for battery charger systems. The U.S. Environmental Protection Agency (EPA) has a test method for battery chargers that only measures standby and maintenance energy use, and does not include efficiency measurements during the charging mode. The Energy Commission's proposed battery charger test procedures differ from the federal test procedures because it includes the requirement to measure efficiency during the charging mode. The Energy Commission has found that

this addition to the test method is a significant data parameter that could lead to a new efficient battery charging standard that has the potential to yield significant energy savings and that is both feasible and cost effective. Also, the proposed test procedure includes test methods for both small and medium sized battery chargers and for larger, motive battery charger systems. The scope of the test procedure includes a wide range of products from cell phones and toothbrushes to power tools and golf carts.

The Energy Commission proposes to adopt the "Energy Efficiency Battery Charger System Test Procedure, Version 2.1.4," August 1, 2008, as submitted by PG&E/Ecos Consulting (see Part B Draft Amendments to the Appliance Efficiency Regulations). The proposed battery charger test procedure will be a voluntary program that the Energy Commission believes will lead to new battery charging efficiency standards that has the potential to produce significant energy savings in California.

Revisions and Updates Necessary for Consistency With Federal Law

The Energy Commission's Appliance Efficiency Regulations include standards, definitions, test methods, and other requirements for federally regulated appliances and adopts reference to those standards that originate from the federal regulations that are located in the Code of Federal Regulations (CFR). Since the CFR underwent a major update in 2005, federal standards, definitions, test methods, and other requirements have been added or changed and incorporated into various sections of federal regulations located in 10 CFR 430 and 10 CFR 431. These and other changes have been included in EISA 2007, signed into law December 2007. Because of the wide ranging additions and changes to federal laws and regulations, the Energy Commission's Appliance Efficiency Regulations no longer reflect current federal standards and need updating.

To maintain consistency with federal standards and regulations, a thorough review of updated federal standards and regulations was necessary. Since these changes are already federal law, or will be on a specific date in the near future, corrections to California regulations must be made to be consistent with the federal law in order for California's regulations to be valid and enforceable. The proposed changes are considered revisions for consistency with federal law and, under the California Administrative Procedures Act, are considered "changes without regulatory effect."

With few exceptions, the majority of the changes proposed for this category are the result of a thorough review of 10 CFR 430 (2008), 10 CFR 431 (2008), and the EISA 2007. The remaining changes are incorporated to

make the Appliance Efficiency Regulations internally consistent, complete and correct.

**LIST OF DOCUMENTS INCORPORATED
BY REFERENCE**

FEDERAL TEST METHODS

CFR, Title 10, Part 430, Subpart B (2008)
 CFR, Title 10, Part 430, Appendix B to Subpart F (2008)
 CFR, Title 10, Part 431, Subparts B through W (2008)
 CFR, Title 10, Part 431, Appendix A to Subpart K (2008)

**AMERICAN NATIONAL STANDARDS
INSTITUTE (ANSI)**

ANSIZ21.56–1994	Standard for Gas — Fired Pool Heaters
ANSIC78.21–1989	Incandescent Lamps — PAR and R Shapes
ANSIC78.21–2003	Incandescent Lamps — PAR and R Shapes
ANSIC78.81–2003	American National Standard for Electric Lamp Bases
ANSIC79.1–1994	Nomenclature for Glass Bulbs — Intended for Use with Electric Lamps
ANSIC79.1–2002	Nomenclature for Glass Bulbs — Intended for Use with Electric Lamps
ANSI-IEC C81.61–2003	American National Standard for Electric Lamp Bases
ANSIC81.61–2006	Specifications for Electric Bases
ANSIC82.2–1984	Fluorescent Lamp Ballasts, Methods of Measurement

**ASSOCIATION OF HOME APPLIANCE
MANUFACTURERS (AHAM)**

ANSI/AHAM HRF–1–2004	Energy Performance and Capacity of Household Refrigerators, Refrigerator– Freezers, and House- hold Freezers
----------------------	---

ECOS CONSULTING

Energy Efficiency Battery Charger System Test
 Procedure Version 2.1.4 dated August 1, 2008

**ILLUMINATING ENGINEERING SOCIETY OF
NORTH AMERICA (IESNA)**

IESNA LM–16–1999	IES Practical Guide to Colorimetry of Light Sources
------------------	---

**INTERNATIONAL COMMISSION ON
ILLUMINATION (CIE)**

CIE Publication 13.3 1995	Method of Measuring and Specifying Colour Rendering Properties of Light Sources
---------------------------	--

NATIONAL ELECTRIC CODE (NEC)

ANSI/NFPA 70 2002 NEC 410.4(A)	National Electric Code 2002 National Electric Code 2002
-----------------------------------	---

**NATIONAL ELECTRIC MANUFACTURERS
ASSOCIATION (NEMA)**

NEMA MG1–2006	Motors and Genera- tors
NEMA Standard TP–1–2002, Table 4–2	Guide for Determining Energy Efficiency of Distribution Transformers

NSF INTERNATIONAL

NSF/ANSI 51	Food Equipment Ma- terials
-------------	-------------------------------

OPTICAL SOCIETY OF AMERICA (OSA)

Journal of Optical Society of America, Volume 58
 (1986)

UNDERWRITERS LABORATORIES, INC. (UL)

UL–1029(2001)	High–Intensity– Discharge Lamp Ballasts
---------------	---

FEDERAL LAW

The proposed amendments do not conflict with federal law.

The proposed amendments are not mandated by federal law.

There are extensive federal regulations regarding appliance efficiency adopted by the Department of Energy that preempt similar regulations adopted by the Energy Commission. (See 42 U.S.C. Section 6291 et seq.; 10 CFR Parts 430, 441.) The proposed amendments regulate appliances that are not covered by these federal regulations.

Federal law has established tests procedures for battery chargers pursuant to 42 U.S.C. 6293, which is located in 10 CFR Section 430.23. Because such a federal test procedure exists, the Energy Commission is preempted from adopting and enforcing a test procedure for battery chargers. Therefore, the Energy Commission is proposing the adoption of voluntary test procedures in the Appliance Efficiency Regulations which will be used to collect data for incorporation in developing possible efficiency standards for battery charger systems at a future date, if found cost effective and feasible pursuant to Public Resource Code section 25402(c)(1).

OTHER STATUTORY REQUIREMENTS

California law requires that the Energy Commission's appliance efficiency standards (1) apply to appliances that use a significant amount of energy on a statewide basis, (2) be based on feasible and attainable efficiencies or feasible improved efficiencies, and (3) be cost-effective based on a reasonable use pattern (i.e., not result in added total costs to the consumer, considering both any increased costs of the efficiency improvement and the reduced utility bill costs resulting from the improved efficiency, over the design life of the appliance). [Public Resources Code § 25402(c)(1).]

The California Lighting Efficiency and Toxics Reduction Act of 2007 (AB 1109) requires: "On or before December 31, 2008, the Energy Commission shall adopt minimum energy efficiency standards for all general purpose lights on a schedule specified in the regulations. The regulations, in combination with other programs and activities affecting lighting use in the state, shall be structured to reduce average statewide electrical energy consumption by not less than 50 percent from the 2007 levels for indoor residential lighting and by not less than 25 percent from the 2007 levels for indoor commercial and outdoor lighting, by 2018." [Public Resources Code § 25402.5.4]

LOCAL MANDATE

The proposed amendments will not impose a mandate on state or local agencies or districts.

ECONOMIC AND FISCAL IMPACTS

The Energy Commission has made the following initial determinations.

FISCAL IMPACT

Costs Requiring Reimbursement. The proposed amendments will not impose on local agencies or school districts any costs for which Government Code sections 17500–17630 require reimbursement.

Other Non-Discretionary Costs or Savings for Local Agencies. Local agencies that purchase appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always recovered by reductions in electricity bills.

Costs or Savings for State Agencies. State agencies that purchase appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always recovered by reductions in electricity bills.

Cost or Savings in Federal Funding to the State. The proposed amendments will not result in any costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

There will be no significant effect on housing costs. The costs of owning and operating a home will decrease slightly as a result of lower electricity costs. Homeowners that purchase appliances subject to the proposed efficiency standards will have to pay increased purchase costs for those appliances; however, those costs will be more than made up by reductions in electricity bills.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Energy Commission has made an initial determination that there will be no significant (or insignificant) statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including small businesses, as a result of the proposed amendments, including the ability of California businesses to compete with businesses in other states.

Nevertheless, the Energy Commission invites interested persons to submit alternative proposals to lessen any adverse economic impact on business that might exist, which may include the following considerations:

- (i) Establishment of differing compliance or reporting requirements, or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements or businesses.
- (iii) Use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

IMPACTS ON THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE, THE CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES, OR THE EXPANSION OF BUSINESSES IN CALIFORNIA

The proposed amendments will have no impact on the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

Businesses and individuals that purchase appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always more than made up by reductions in electricity bills. The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTS

The proposed amendments to Appliance Efficiency Regulations would require mandatory data submittal of energy efficiency data for manufacturers (i.e., Business Reports) to the Energy Commission about the appliances that they manufacture. (In California, there are few manufacturers of the appliances that would be added to the regulations by the proposed amendments.) The Energy Commission estimates that the annual reporting cost would be \$400 per manufacturer.

It is necessary for the health, safety, or welfare of the people of the state that the proposed regulations apply to business, for two basic reasons. First, the Legislature has required the Energy Commission to adopt efficiency standards, and the submittal of data is necessary to determine compliance with the standards. Second, the data required to be submitted will be used to increase consumer awareness, to complement utility efficiency programs, and for research, all of which will foster additional efficiency, which, in turn, will lead to economic, energy reliability, and environmental benefits.

SMALL BUSINESS

Like all businesses, small businesses benefit from appliance regulations. Small businesses that purchase appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always more than made up by reductions in electricity bills.

ALTERNATIVES

Before it adopts the proposed amendments, the Energy Commission must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed amendments. To date, the Energy Commission has found no alternatives to the proposed action that would be more effective, or as effective and less burdensome.

DESIGNATED CONTACT PERSONS

Please contact the following person, preferably by e-mail, for general information about the proceeding or to obtain any document relevant to the proceeding, including the Express Terms, the Initial Statement of Reasons, the Form 399, and any other document in the rulemaking file:

Linda Franklin
California Energy Commission
1516 Ninth Street, Mail Station 25
Sacramento, California 95814-5512
Telephone: 916-654-4064 Fax: 916-654-4304
E-mail: [lfrankli@energy.state.ca.us]

Please contact the following person, preferably by e-mail, for substantive questions:

Harinder Singh
California Energy Commission
1516 Ninth Street, Mail Station 25
Sacramento, California 95814-5512
Telephone: 916-654-4091
Fax: 916-654-4304
E-mail: [hsingh@energy.state.ca.us]

The backup contact person for substantive questions is:

Melinda Merritt
California Energy Commission
1516 Ninth Street, Mail Station 25
Sacramento, California 95814-5512
Telephone: 916-654-4536
Fax: 916-654-4304
E-mail: [mmerritt@energy.state.ca.us]

Mr. Singh and Ms. Merritt also can assist in obtaining documents and in answering general questions.

PUBLIC ADVISER

The Energy Commission has a Public Adviser whose function it is to assist the public in participating in Energy Commission proceedings. Please contact her if you have general questions about how to function effectively in the rulemaking:

Elena Miller, Public Adviser
California Energy Commission
1516 Ninth Street, Mail Station 12
Sacramento, California 95814-5512
Telephone: 916-654-4489
Fax: 916-654-4493
E-mail: [pao@energy.state.ca.us]

NEWS MEDIA INQUIRIES

News media inquiries should be directed to Media and Public Communications Office at (916) 654-4989, or by e-mail at [mediaoffice@energy.state.ca.us]

AVAILABILITY OF THE TEXT OF THE PROPOSED AMENDMENTS (EXPRESS TERMS), THE INITIAL STATEMENT OF REASONS (ISOR), AND THE INFORMATION UPON WHICH THE PROPOSAL IS BASED (RULEMAKING FILE)

The first action to take to obtain documents in this rulemaking proceeding is to visit the Energy Commission's appliance efficiency website at [www.energy.ca.gov/appliances].

The website will have all of the documents prepared by the Energy Commission, including the Express Terms of the proposed amendments (written in plain English and set forth in a format that indicates both the existing text and the proposed text), the Initial Statement of Reasons, and all documents relied upon by the Energy Commission, as well as most of the other documents in the rulemaking file.

The Express Terms and the Initial Statement of Reasons are also available at no cost from the contact person, Linda Franklin (see above).

The Energy Commission's Docket Office has available all of the documents in the rulemaking file; for copies, please contact:

Docket Office
California Energy Commission
1516 Ninth Street, MS 4
Sacramento, California 95814-5504
916-654-5076

AVAILABILITY OF MODIFIED AMENDMENTS (15-DAY LANGUAGE)

At the **October 22, 2008** adoption hearing, the Energy Commission may adopt the proposed amendments substantially as described in this NOPA. If modifications are made, and they are sufficiently related to the originally-proposed amendments, the full modified text with changes clearly indicated will be made available to the public at least 15 days before the Energy Commission adopts the amendments. A notice of the availability of any such text will be placed on the Energy Commission's website and will be mailed to all persons to whom this notice is being mailed, who submitted written or oral comments at any hearing, who submitted written comments during the public comment period, or who requested to receive such modifications. In addition, copies may be requested from the contact person named above and from the Docket Office. The Energy Commission will accept written comments on any such modified text for at least 15 days after the text is made available to the public. Adoption of the 15-Day language will be considered at a public hearing scheduled in the notice of availability.

FINAL STATEMENT OF REASONS

The Energy Commission will prepare a Final Statement of Reasons on the amendments, responding to all relevant comments made during the proceeding. The Final Statement of Reasons will be available from the contact person named above and from the Docket Office, and will be posted on the Energy Commission's website.

INTERNET ACCESS

Documents prepared by the Energy Commission for this rulemaking, including this NOPA, the Express Terms, the ISOR, and most other documents in the rulemaking file, will be posted on the Energy Commission's website, [<http://www.energy.ca.gov/appliances>].

Note: The California Energy Commission's formal name is the State Energy Resources Conservation and Development Commission.

TITLE 20. CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

NOTICE OF PROPOSED ACTION

PROPOSED AMENDMENTS TO APPLIANCE EFFICIENCY REGULATIONS California Code of Regulations, Title 20, Sections 1601 Through 1608

CALIFORNIA ENERGY COMMISSION
Docket Number 08-AAER-1A
August 29, 2008

INTRODUCTION

The California Energy Commission (Energy Commission) proposes to amend its Appliance Efficiency Regulations. The purpose of this rulemaking is to carry out the mandates established in Assembly Bill 1109 (Huffman, Chapter 534, Statutes of 2007) (AB 1109), to set new efficiency standards for general purpose lighting by December 31, 2008. It is the Energy Commission's intent in this rulemaking to adopt accelerated effective dates for the federal Tier I and Tier II lighting efficiency standards established in the Federal Energy Independence and Security Act of 2007 (EISA 2007, as codified in 42 U.S.C. beginning at section 6291) and to adopt efficiency standards for portable lighting luminaires that will increase the energy efficiency of the luminaires. The proposed standards will have a beginning effective date of January 1, 2011, for the federal Tier I standards for general service incandescent lamps, and an effective date of January 1, 2018 for standards related to the expected Tier II federal high efficacy general service lamp standards. The proposed standards for portable luminaires will have an effective date of January 1, 2010. In a parallel and separate rulemaking (Docket 08-AAER-1B) the Energy Commission intends to adopt lighting efficiency standards for high intensity discharge metal halide luminaires as part of the AB 1109 mandate to set new efficiency standards for general purpose lighting by December 31, 2008.

The Energy Commission has prepared this Notice of Proposed Action (NOPA) and an Initial Statement of Reasons (ISOR) regarding the need for the proposed amendments. The Energy Commission has also published the Express Terms (45-Day Language) of the proposed amendment language. These documents can

be obtained from the contact persons designated below or from the Energy Commission website at [<http://www.energy.ca.gov/appliances/index.html>].

PUBLIC HEARING

The Energy Commission's Energy Efficiency Committee (Committee) will hold a public hearing on the following date to receive public comment on the Express Terms:

WEDNESDAY, SEPTEMBER 17, 2008

9:00 am.

California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair accessible)

Audio for the September 17, 2008, Committee hearing will be broadcast over the Internet. Details regarding the Energy Commission's webcast can be found at [www.energy.ca.gov/webcast].

At this hearing any person may present statements or arguments relevant to the proposed action. Interested persons may also submit written comments. If possible, please provide written comments to be considered at the Committee hearing by **September 15, 2008**. The Energy Commission appreciates receiving written comments at the earliest possible date.

PROPOSED ADOPTION DATE

The Energy Commission will hold a public hearing for consideration and possible adoption of the 45-Day Language Express Terms on the following date unless the Energy Commission decides to modify the Express Terms through the issuance of 15-day language.

WEDNESDAY, OCTOBER 22, 2008

10:00 a.m.

California Energy Commission
Hearing Room A
1516 Ninth Street
Sacramento, California
(Wheelchair accessible)

Audio for the October 22, 2008, adoption hearing will be broadcast over the Internet.

If you have a disability and require assistance to participate in these hearings, please contact Lou Quiroz at (916) 654-5146 at least 5 days in advance.

At the hearing, any person may present written or oral comments on the proposed amendments. Interested parties may also submit written comments. If possible, please provide written comments to be considered at the adoption hearing by **October 21, 2008**. The Energy

Commission appreciates receiving written comments at the earliest possible date.

PUBLIC COMMENT PERIOD AND WRITTEN COMMENTS

The public comment period for this NOPA will be from **August 29, 2008**, through **October 13, 2008**. Any interested person may submit written comments on the proposed amendments. Written comments will still be accepted at the public Committee hearing and Energy Commission adoption hearing if they are received by 10:00 a.m. on **October 22, 2008**. Written comments shall be e-mailed to [Docket@energy.state.ca.us], mailed or delivered to the following address (e-mailing is preferred):

California Energy Commission
Docket No. 08-AAER-1A
Docket Unit
1516 Ninth Street, Mail Station 4
Sacramento, California 95814-5504

All written comments must specify **Docket No. 08-AAER-1A** on the document. When comments are e-mailed on behalf of an organization, the comments should be a scanned copy of the original on the organization's letterhead and include a signature of an authorized representative.

AUTHORITY AND REFERENCE

The Energy Commission proposes to adopt the amendments under the authority of Public Resources Code sections 25213, 25218(e), 25402(c)(1) and 25402.5.4. The proposed amendments implement, interpret, and make specific Public Resources Code sections 25402(c)(1).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law (Public Resources Code section 25402(c)(1)) requires the Energy Commission to adopt regulations that prescribe minimum efficiency levels for appliances. The Energy Commission first adopted appliance efficiency regulations in 1976 and has periodically revised them since then. The current regulations include provisions on testing of appliances to determine their efficiency, reporting of data by manufacturers to the Energy Commission, standards establishing mandatory efficiency levels, and compliance and enforcement procedures, as well as general provisions on the scope of the regulations and definitions.

In addition, the California Lighting Efficiency and Toxics Reduction Act of 2007, added by AB 1109 and codified in Public Resources Code section 25402.5.4, found energy consumption for lighting accounts for nearly 20 percent of the state's electricity demand. The bill also declares that energy efficiencies of existing lighting technologies vary significantly, and that current light bulb purchases are predominately for less efficient incandescent bulbs.

To address these issues, AB 1109 requires that the Energy Commission, on or before December 31, 2008, adopt minimum energy efficiency standards for all general purpose lights on a schedule specified in the regulations, "The regulations, in combination with other programs and activities affecting lighting use in the state, shall be structured to reduce average statewide electrical energy consumption by not less than 50 percent from the 2007 levels for indoor residential lighting and by not less than 25 percent from the 2007 levels for indoor commercial and outdoor lighting, by 2018."

The Energy Commission is proposing to adopt the lighting efficiency standards for general service lighting, as provided by recently enacted federal law, and new efficiency standards for portable luminaires.

Early Adoption of Federal Efficiency Standards for General Service Lamps

In the rulemaking proceeding that is the subject of this NOPA, the Energy Commission is proposing to amend the Appliance Efficiency Regulations to adopt accelerated effective dates for the federal lighting efficiency standards as established by the Federal Energy Independence and Security Act of 2007 (EISA 2007 and codified in 42 U.S.C. beginning at section 6291). 42 U.S.C. section 6295 allows California to set earlier effective dates than what was established in the federal law. (42 U.S.C. §§ 6295(i)(6)(A)(vi), and 6297(b)(1)(B)(ii)). The Energy Commission proposes to: (1) move up the federal effective dates of January 1, 2012 through January 1, 2014, for the federal general service incandescent lamps (Tier I) standards to January 1, 2011 through January 1, 2013, for California, and (2) adopt Tier II standards for general service lamps effective January 1, 2018, for California, two years earlier than expected federal Tier II standards.

The Energy Commission has found that proposed standards that adopt early effective dates for the federal efficiency standards are achievable with available new lamp technologies at a reasonable cost to consumers. The Energy Commission has also found that compact fluorescent lamps (CFL) already exist in the market to meet the proposed efficiency standards under this rule. Further, the Energy Commission has found that there will be no additional cost to consumers because currently available CFLs are compliant with both the federal

Tier I and expected Tier II efficiency standards. The cost benefit analysis shows that the proposed lighting standards are cost effective and would result in significant energy savings.

Standards for Portable Luminaires

The Energy Commission also intends to adopt efficiency standards for portable lighting luminaires that will increase the energy efficiency of the luminaires. Portable luminaires include plug-in table and floor lamps with varying lamp/socket configurations. Most portable lighting fixtures are designed to accept lamps that are federally regulated.

The proposed standards will require these luminaires, after January 1, 2010, to be equipped with one of the following alternatives: (1) a dedicated fluorescent lamp pin-based socket connected to a high frequency electronic ballast with specified efficiency requirements; (2) a GU-24 line-voltage socket that is not rated for use with an incandescent lamp; (3) a light emitting diode (LED) luminaire or LED light engine with integral heat sink with specified efficiency, (4) a dimmer control or high-low control with a maximum rating for single-ended, non-screw based halogen lamp sockets, or (5) an appropriate number of co-packaged specified compact fluorescent lamp (CFL) or other high efficacy lamps that can be screwed in the luminaire.

The Energy Commission has found that the compliance options provided by the proposed regulation save similar amounts of energy, are equally technically feasible and offer flexibility as requested by the lighting industry. The cost benefit analysis shows that the proposed lighting standards are cost effective and would result in significant energy savings. The cost benefit analysis assumed a most likely compliance option choice of co-packaging of portable luminaires with CFLs or other high efficacy lamps (alternative #5).

The Energy Commission has found that by adopting the federal Tier I and expected Tier II standards with effective dates earlier than that established by federal law and efficiency standards for portable lighting luminaires will allow California to maximize energy savings from these lamps in order to meet the AB 1109 lighting energy reduction requirements for indoor residential and indoor commercial general purpose lighting.

LIST OF DOCUMENTS INCORPORATED BY REFERENCE

ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA (IESNA)

IESNA LM-16-1999; IES Practical Guide to
Colorimetry of Light
Sources

IESNA LM-79-08;

Approved Method:
Electrical and Photo-
metric Measurements
of Solid-State Light-
ing Products

UNDERWRITERS LABS (UL)

UL-153

Standards for Portable
Luminaires

UL 588

Standard for Seasonal
and Holiday Decora-
tive Products

UL 1598

Standards for Luminaires

FEDERAL

47 CFR Part 15/18

Federal Communica-
tions Commission:
Non-consumer Emission Limits

U.S. EPA Energy Star

Program Requirements and Criteria for
CFLs —Version 4.0
March 7, 2008.

CALIFORNIA

2008 Building Efficiency
Standards, California Joint
Appendix, JA8

Testing of Light
Emitting Diode Light
Sources

INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE)

IEEE C.62.41-1991

Recommended Practices on Surge Volt-
ages in Low-voltage
AC Power Circuits

ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA (IESNA)

IESNA LM-79-08

Approved Method:
Electrical and Photo-
metric Measurements
of Solid-State Light-
ing Products

INTERNATIONAL COMMISSION ON ILLUMINATION (CIE)

CIE Publication 13.3 1995

Method of Measuring
and Specifying Colour
Rendering Properties
of Light Sources

OPTICAL SOCIETY OF AMERICA (OSA)

Journal of Optical Society of America, Volume 58
(1986)

FEDERAL LAW

The proposed amendments do not conflict with federal law. There are extensive federal appliance efficiency regulations adopted by the U.S. Department of Energy that preempt states from adopting similar regulations. However, federal law has provided California with the authority to adopt the federal Tier I and expected Tier II lighting standards at earlier effective dates (42 U.S.C. sections 6295(i)(6)(A)(vi), and 6297(b)(1)(B)(ii)), and there are no federal standards for portable lighting luminaires resulting in federal preemption. The proposed amendments are not mandated by federal law.

OTHER STATUTORY REQUIREMENTS

California law requires that the Energy Commission's Appliance Efficiency Regulations (1) apply to appliances that use a significant amount of energy on a statewide basis, (2) be based on feasible and attainable efficiencies or feasible improved efficiencies, and (3) be cost-effective based on a reasonable use pattern (i.e., not result in added total costs to the consumer, considering both the increased costs of the efficiency improvement and the reduced utility bill costs resulting from the improved efficiency, over the design life of the appliance). (Pub. Resources Code section 25402(c)(1).)

California Lighting Efficiency and Toxics Reduction Act of 2007 (AB 1109) requires: "On or before December 31, 2008, the Energy Commission shall adopt minimum energy efficiency standards for all general purpose lights on a schedule specified in the regulations. The regulations, in combination with other programs and activities affecting lighting use in the state, shall be structured to reduce average statewide electrical energy consumption by not less than 50 percent from the 2007 levels for indoor residential lighting and by not less than 25 percent from the 2007 levels for indoor commercial and outdoor lighting, by 2018." (Pub. Resources Code section 25402.5.4)

LOCAL MANDATE

The proposed amendments will not impose a mandate on state or local agencies or districts.

ECONOMIC AND FISCAL IMPACTS

The Energy Commission has made the following initial determinations.

FISCAL IMPACT

Costs Requiring Reimbursement. The proposed amendments will not impose on local agencies or school districts any costs for which Government Code sections 17500–17630 require reimbursement.

Other Non-Discretionary Costs or Savings for Local Agencies. Local agencies that purchase lighting appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always recovered by reductions in electricity bills.

Costs or Savings for State Agencies. State agencies that purchase lighting appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always recovered by reductions in electricity bills.

Cost or Savings in Federal Funding to the State. The proposed amendments will not result in any costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

There will be no significant effect on housing costs. The costs of owning and operating a home will decrease slightly as a result of lower electricity costs. Homeowners that purchase appliances subject to the proposed efficiency standards will have to pay increased purchase costs for those appliances; however, those costs will be more than made up by reductions in electricity bills.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Energy Commission has made an initial determination that there will be no significant (or insignificant) statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including small businesses, as a result of the proposed amendments, including the ability of California businesses to compete with businesses in other states.

Nevertheless, the Energy Commission invites interested persons to submit alternative proposals to lessen any adverse economic impact on business that might exist, which may include the following considerations:

- (i) Establishment of differing compliance or reporting requirements, or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) Use of performance standards rather than prescriptive standards.

- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

IMPACTS ON THE CREATION OR
ELIMINATION OF JOBS WITHIN THE STATE,
THE CREATION OF NEW BUSINESSES OR THE
ELIMINATION OF EXISTING BUSINESSES,
OR THE EXPANSION OF BUSINESSES
IN CALIFORNIA

The proposed amendments will have no impact on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California.

COST IMPACTS ON REPRESENTATIVE
PERSON OR BUSINESS

Businesses and individuals that purchase lighting appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always more than made up by reductions in electricity bills. The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTS

The proposed amendments to the Appliance Efficiency Regulations would require mandatory data submittal of energy efficiency data (i.e., Business Reports) from manufacturers of general service lamps and portable luminaires. There are few manufacturers of the appliances in California that would be required to report under the proposed regulations. The Energy Commission estimates that the annual reporting cost would be \$400.00 per manufacturer.

It is necessary for the health, safety, or welfare of the people of the state that the proposed regulations apply to business for two basic reasons. First, the Legislature has required the Energy Commission to adopt efficiency standards, and the submittal of data is necessary to determine compliance with the standards. Second, the data required to be submitted will be used to increase consumer awareness, to complement utility efficiency programs, and for research, all of which will foster additional efficiency, which, in turn, will lead to economic, energy reliability, and environmental benefits.

SMALL BUSINESS

Like all businesses, small businesses benefit from appliance regulations. Small businesses that purchase lighting appliances subject to efficiency standards sometimes have to pay increased purchase costs for those appliances. However, those costs are always more than made up by reductions in electricity bills.

ALTERNATIVES

Before it adopts the proposed amendments, the Energy Commission must determine that no reasonable alternative it considered (or that has otherwise been identified and brought to its attention) would be more effective in carrying out the purpose for which the amendments are proposed, or as effective as and less burdensome to affected private persons than the proposed amendments. To date, the Energy Commission has found no alternatives to the proposed action that would be more effective, or as effective and less burdensome.

DESIGNATED CONTACT PERSONS

Please contact the following person, preferably by e-mail, for general information about the proceeding or to obtain any document relevant to the proceeding, including the Express Terms, the Initial Statement of Reasons, the Form 399, and any other document in the rulemaking file:

Linda Franklin
California Energy Commission
1516 Ninth Street, Mail Station 25
Sacramento, California 95814-5512
Telephone: 916-654-4064
Fax: 916-654-4304
E-mail: [lfrankli@energy.state.ca.us]

Please contact the following person, preferably by e-mail, for substantive questions:

Harinder Singh
California Energy Commission
1516 Ninth Street, Mail Station 25
Sacramento, California 95814-5512
Telephone: 916-654-4091
Fax: 916-654-4304
E-mail: [hsingh@energy.state.ca.us]

The backup contact person for substantive questions is:

Melinda Merritt
California Energy Commission
1516 Ninth Street, Mail Station 25
Sacramento, California 95814-5512
Telephone: 916-654-4536
Fax: 916-654-4304
E-mail: [mmerritt@energy.state.ca.us]

Mr. Singh and Ms. Merritt also can assist in obtaining documents and in answering general questions.

PUBLIC ADVISER

The Energy Commission has a Public Adviser whose function it is to assist the public in participating in Energy Commission proceedings. Please contact her if you have general questions about how to function effectively in the rulemaking:

Elena Miller, Public Adviser
California Energy Commission
1516 Ninth Street, Mail Station 12
Sacramento, California 95814-5512
Telephone: 916-654-4489
Fax: 916-654-4493
E-mail: [pao@energy.state.ca.us]

NEWS MEDIA INQUIRIES

News media inquiries should be directed to the Media and Communications Office at (916) 654-4989, or by e-mail at [mediaoffice@energy.state.ca.us].

AVAILABILITY OF THE TEXT OF THE PROPOSED AMENDMENTS (EXPRESS TERMS), THE INITIAL STATEMENT OF REASONS (ISOR), AND THE INFORMATION UPON WHICH THE PROPOSAL IS BASED (RULEMAKING FILE)

The first action to take to obtain documents in this rulemaking proceeding is to visit the Energy Commission's appliance efficiency website at [www.energy.ca.gov/appliances].

The website will have all of the documents prepared by the Energy Commission, including the Express Terms of the proposed amendments (written in plain English and set forth in a format that indicates both the existing text and the proposed text), the Initial Statement of Reasons, and all documents relied upon by the Commission, as well as most of the other documents in the rulemaking file. The Express Terms and the Initial Statement of Reasons are also available at no cost from the contact person, Linda Franklin (see above).

The Energy Commission's Docket Office has available all of the documents in the rulemaking file; for copies, please contact:

Docket Office
California Energy Commission
1516 Ninth Street, MS 4
Sacramento, California 95814-5504
916-654-5076

AVAILABILITY OF MODIFIED AMENDMENTS (15-DAY LANGUAGE)

At the **October 22, 2008** adoption hearing, the Energy Commission may adopt the proposed amendments substantially as described in this NOPA. If modifications are made, and they are sufficiently related to the originally-proposed amendments, the full modified text with changes clearly indicated will be made available to the public at least 15 days before the Energy Commission adopts the amendments. A notice of the availability of any such text will be placed on the Energy Commission's website and will be mailed to all persons to whom this notice is being mailed, who submitted written or oral comments at any hearing, who submitted written comments during the public comment period, or who requested to receive such modifications. In addition, copies may be requested from the contact person named above and from the Docket Office. The Energy Commission will accept written comments on any such modified text for at least 15 days after the text is made available to the public. Adoption of the 15-Day language will be considered at a public hearing scheduled in the notice of availability.

FINAL STATEMENT OF REASONS

The Energy Commission will prepare a Final Statement of Reasons on the amendments, responding to all relevant comments made during the proceeding. The Final Statement of Reasons will be available from the contact person named above and from the Docket Office, and will be posted on the Energy Commission's website.

INTERNET ACCESS

Documents prepared by the Energy Commission for this rulemaking, including this NOPA, the Express Terms, the ISOR, and most other documents in the rulemaking file, will be posted on the Energy Commission's website, [<http://www.energy.ca.gov/appliances>].

Note: The California Energy Commission's formal name is the State Energy Resources Conservation and Development Commission.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication August 29, 2008

CESA CONSISTENCY DETERMINATION
REQUEST FOR

Ygnacio Valley Road Restoration Project
Contra Costa County
2080-2008-021-03

The Department of Fish and Game (Department) received a notice on August 18, 2008 that the City of Concord (Concord) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of the permanent repair of Ygnacio Valley Road within the Lime Ridge Open Space immediately north of the City of Walnut Creek, approximately 1,200 feet south of the intersection of Cowell Street and Montecito Street, in Contra Costa County. Due to landslides resulting from unusually heavy rains during 2005 and 2006, Concord already conducted emergency repairs to Ygnacio Valley Road and the adjacent slopes.

Concord and the California Department of Transportation (Caltrans) now propose to conduct permanent repairs to Ygnacio Valley Road. As part of the project, Concord is proposing to construct a 420-linear foot concrete pier and tieback wall immediately adjacent to Ygnacio Valley Road and within the road right-of-way. The proposed project includes erosion control measures, construction fencing, signing and stripping, installation of an asphalt-concrete dyke, and installation of roadside drainage. Project activities associated with staging and construction will result in 3.91 acres of temporary impacts to Alameda Whipsnake (*Masticophis lateralis*) and 0.069 acres of permanent impacts to Alameda Whipsnake. There were also 17 acres of impacts to Alameda Whipsnake that already occurred during the emergency repairs of the landslides.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (81420-2008-F-1289)(BO) and incidental take statement (ITS) to Caltrans (designated as lead agency as per Memorandum of Understanding with the Federal Highway Administration) on April 29, 2008, which considered the effects of the project on the Federally threatened and State threatened Alameda Whipsnake. Pursuant to California Fish and Game Code Section 2080.1, Concord is requesting a determination that the

BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, Concord will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES WILL ADOPT REVISED BILLING CODES FOR MEDI-CAL PROGRAM 2008 CURRENT PROCEDURAL TERMINOLOGY — 4TH EDITION (CPT-4) AND 2008 HEALTHCARE COMMON PROCEDURE CODING SYSTEM (HCPCS) LEVEL II

Effective for dates of service on or after September 1, 2008, the California Department of Health Care Services (DHCS) will adopt the 2008 Healthcare Common Procedure Coding System (HCPCS) Update, including the 2008 Current Procedural Terminology — 4th Edition (CPT-4), and the 2008 HCPCS Level II codes and modifiers. DHCS will establish specific reimbursement rates as follows:

- The maximum reimbursement for durable medical equipment using the updated billing codes, except wheelchairs and wheelchair accessories, will be established at an amount not to exceed 80 percent of the 2008 Medicare rates. Reimbursement for wheelchair and wheelchair accessories will be established at an amount not to exceed 100 percent of the 2008 Medicare rates (Welfare and Institutions Code section 14105.48).
- The maximum reimbursement for orthotic and prosthetic appliances and clinical laboratory services using the updated billing codes will be established at an amount not to exceed 80 percent of the 2008 Medicare rates (Welfare and Institutions Code sections 14105.21 and 14105.22).
- Maximum reimbursement for physician services, including surgical procedures, using the updated billing codes will be established at an amount not to exceed 80 percent of the 2008 Medicare rate for the same service.

These proposed changes will impact the following provider categories:

- Clinical laboratories
- Durable medical equipment

- Hospital outpatient departments and clinics
- Long-term care facilities
- Ground medical transportation
- Other outpatient clinics
- Optometrists
- Orthotists and prosthetists
- Pharmacies/pharmacists
- Physicians
- Podiatrists
- Providers of services under the California Children's Services/Genetically Handicapped Persons Program

PUBLIC REVIEW

The proposed changes are available for public review at local county welfare offices throughout California. Written comments must be submitted within 45 days from the publication date of these changes in the California Regulatory Notice Register. All comments should include the author's name, organization or affiliation, phone number and Provider ID number, if appropriate. Members of the public may request the proposed list of billing codes, and proposed reimbursement rates under the 2008 HCPCS Update from, and submit comments to:

Linda Machado, Chief
Professional Provider Unit
California Department of Health Care Services
1501 Capitol Avenue
MS 4612
P.O. Box 997417
Sacramento, CA 95899-1417

DISAPPROVAL DECISION

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, California 95814-4339, (916) 323-6225—FAX (916) 323-6826. Please request by OAL file number.

DEPARTMENT OF WATER RESOURCES

State of California

Office of Administrative Law

In re:

Department of Water Resources

Regulatory Action: Title 23

California Code of Regulations

Adopt sections: 570, 571, 572, 573, 574,
575, 576, 577, 578

DECISION OF DISAPPROVAL OF EMERGENCY REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2008-0731-02 E

DECISION SUMMARY

On July 31, 2008, the Department of Water Resources ("Department") submitted to the Office of Administrative Law ("OAL") a proposed emergency action to adopt Chapter 3.5 of Division 2 of Title 23 (commencing with section 570) regarding Financial Assistance for Flood Management Projects and Small Flood Management Projects.

On August 11, 2008, OAL notified the Department that OAL disapproved this emergency regulatory action for failure to comply with specified standards and procedures of the California Administrative Procedure Act ("APA"). The reasons for the disapproval are summarized below:

- the proposed regulations fail to comply with the *emergency standard* of Government Code section 11346.1¹;
- the proposed regulations fail to comply with the *clarity* standard of section 11349.1; and,
- the proposed regulations fail to comply with the *consistency* standard of section 11349.1.

This disapproval decision contains examples of some of the identified issues, but is not exhaustive. OAL reserves the right to conduct a complete APA review for compliance with the procedural and substantive requirements of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2, of the Government Code, upon the submission of a proposed regular rule-making or resubmission of a proposed emergency rule-

¹ Unless stated otherwise, all California Code references are to the Government Code.

making. All APA issues must be resolved prior to OAL approval of any submission.

Date: August 18, 2008

/s/

Elizabeth Heidig
Staff Counsel

for: SUSAN LAPSLEY
Director

Original: Lester Snow
Cc: Karin Shine
Michele Ng

**ACCEPTANCE OF PETITION
TO REVIEW ALLEGED
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Agency being challenged:

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Martin Martinez, P-54368
California Correctional Institute
P.O. BOX 1906 (4B 4B 209)
Tehachapi, CA 93581

Agency contact:

Timothy Lockwood, Chief of Regulations & Policy
Management Branch
Department of Corrections and Rehabilitation
P.O. BOX 942883
Sacramento, CA 94283-0001

Please note the following timelines:

Publication of Petition in Notice Register: August 29, 2008

Deadline for Public Comment: September 29, 2008

Deadline for Agency Response: October 14, 2008

Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response

Deadline for OAL Decision: December 29, 2008

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

MARTIN V. MARTINEZ #P-54366
 CALIFORNIA CORRECTIONAL INSTITUTE
 4B 4B-209 - P.O. BOX 1906
 TESHACHIPI, CA - 95581

RECEIVED

TO: STATE OF CALIFORNIA
 OFFICE OF ADMINISTRATIVE LAW
 300 CAPITAL MALL, SUITE #1250
 SACRAMENTO, CA - 95814

JUL 14 2008
 STATE OF CALIFORNIA
 OFFICE OF
 ADMINISTRATIVE LAW

RE: REQUEST FOR DETERMINATION
 (TITLE 1, CALIF. CODE OF REGULATIONS, §§§ 122)

1. INTRODUCTION:

THIS IS A REQUEST FOR DETERMINATION ON A UNDERGROUND REGULATION IMPLEMENTED BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR). THE REGULATION GOVERNS THE 'DISCIPLINARY PROCESS'. THIS PROCESS ALLOWS FOR ADMINISTRATIVE SEGREGATION INMATES TO BE CHARGED WITH "POSSESSION OF A DEADLY WEAPON", AN A-1 OFFENSE, IF FOUND IN POSSESSION OF A "RAZOR BLADE", BASED ON A MEMORANDUM DATED (2-21-02) AUTHORED BY FORMER DEPUTY DIRECTOR, LARRY WITEK. THE NATURE OF THIS UNDERGROUND REGULATION IS BOTH CONSTITUTIONALLY, AND STATUTORILY ILLEGAL.

2. PARTIES:

1.) THE PERSON REQUESTING THIS HEARING FOR DETERMINATION IS MARTIN V. MARTINEZ, A CALIFORNIA STATE PRISONER CURRENTLY INCARCERATED AT CALIFORNIA CORRECTIONAL INSTITUTE. ALL OTHER STATE PRISONERS HAVE AN EQUALLY BENEFICIAL INTERESTS IN THIS REQUEST AND DETERMINATION THERE OF.

2.) THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION IS THE STATE AGENCY WHICH HAS ISSUED, IMPLEMENTED, UTILIZING AND ENFORCING THE UNDERGROUND REGULATION.

3. NATURE OF UNDERGROUND REGULATION:

1.) THE REGULATION IN QUESTION ALLOWS FOR (CDCR) TO CHARGE INMATES WITH POSSESSION OF A DEADLY WEAPON FOR "POSSESSING RAZOR BLADES" IN SPECIAL HOUSING UNITS (ASU, PSU, SHU's).

2.) THE POSITION OF (CDCR) IS THAT A SINGLE "RAZOR BLADE" CONSTITUTES A DEADLY WEAPON, WHETHER OR NOT IT HAS BEEN ALTERED FROM ITS ORIGINAL FORM, AND/OR ACTUALLY MANUFACTURED INTO A DEADLY WEAPON. IN ADDITION, INMATES CAN BE FOUND GUILTY OF AN A-1 OFFENSE AND ASSESSED 360 DAYS CREDIT FORFEITURE.

3.) AS A RESULT OF THIS MEMORANDUM, DATED 2-21-02, PRISON OFFICIALS CAN NOW FIND INMATES WHO ARE IN POSSESSION OF CONTRABAND, GUILTY OF POSSESSION OF A DEADLY WEAPON.

4.) THE MEMORANDUM IN QUESTION ILLEGALLY AMENDS THE DEFINITION OF A DEADLY WEAPON AS STIPULATED IN C.O.R. 3006 (a) AND 3323 (6) (8)

5.) MANY (COLOR) INMATES ARE CHARGED AND FOUND GUILTY OF POSSESSION OF A DEADLY WEAPON, AN A-1 OFFENSE, AND ASSESSED 360 DAYS CREDIT FORFEITURE BASED SOLELY ON THE EXISTENCE OF SAID MEMORANDUM DATED 2-21-02. (SEE ATTACHED (CLR) DIRECTORS LEVEL REVIEW.)

6.) THE CONTENTS OF SAID MEMORANDUM WERE NOT MADE AVAILABLE FOR PUBLIC INPUT AND LEGAL CODIFICATION AS REQUIRED BY GOVERNMENT CODE 11340 AND PENAL CODE 5058.

7.) THE MEMORANDUM EXCEEDS THE TIME REQUIREMENTS FOR AN EMERGENCY REGULATORY ACTION (DECLARATION OF IMMINENT DANGER) AS STIPULATED IN GOVERNMENT CODE 11346.1 (e) AND PENAL CODE 5058.2 & 5058.3.

8.) PRISONERS DO NOT HAVE A CITATION FOR THIS UNDERGROUND REGULATION AND THE STATE AGENCY CAN NOT GIVE ONE.

9.) THE STATE AGENCY HAS BEEN GIVEN A COPY OF THIS REQUEST. PLEASE SEE ENCLOSED TRANSMITTAL DECLARATION.

4. LEGAL ANALYSIS:

THE IMPLEMENTATION OF THE UNDERGROUND REGULATION IS WITHOUT COMPLIANCE WITH THE REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURES ACT. (APA) (SEE P.C. 5058 AND GOVN. CODE SECTION 11370 ET AL.)

WITH LIMITED EXCEPTIONS NOT APPLICABLE HERE, THE APA PROVIDES THAT EVERY PROPOSED ADOPTION OR CHANGE IN THE RULES AND REGULATIONS OF, INTER ALIA, THE COLOR MUST PROVIDE FOR PUBLIC INPUT PRIOR TO ITS ENACTMENT. VARIOUS PROCEDURES, INCLUDING PUBLIC NOTICE AND HEARINGS ON THE PROPOSED RULE CHANGES, ARE MANDATED BY THE APA TO THIS END.

THE COURTS HAVE ACKNOWLEDGED THE TRUE MEANING OF THE APA STATUTE.

"THE APA WAS ENACTED TO ESTABLISH BASIC MINIMUM PROCEDURAL REQUIREMENTS FOR THE ADOPTION, OR CHANGES IN THE RULES, AMENDMENT OR REPEAL OF ADMINISTRATIVE REGULATION. . . UNLESS AN AGENCY PROMULGATES A REGULATION IN SUBSTANTIAL COMPLIANCE WITH THE APA, THE REGULATION IS WITHOUT LEGAL EFFECT." (SEE GRIER V. KISSER (1990) 219 CAL. APP. 3D 432, 431)

IF THE LANGUAGE OF A STATUTE IS CLEAR AND UNAMBIGUOUS, THERE IS NO NEED TO LOOK TO INTENT TO DETERMINE MEANING. (IN RE LANCE W. (1985) 37 CAL. 3D 973, 886; STATE BOARD OF EDUCATION V. LEVIT (1989) 82 CAL. 2D 441, 463)

PENAL CODE 5058 EXPLICITLY REQUIRES THAT THE DIRECTOR ABIDE BY THE APA. THE STATUTES WORDS SHOULD BE GIVEN THE MEANING THEY BEAR IN THEIR ORIGINAL USE. (SEE IN RE ROULAS (1979) 28 CAL. 3D 152, 155.)

GOVN. CODE 11346.1 (e) STATES, NO REGULATION, AMENDMENT, OR ORDER OF REPEAL ADOPTED AS AN EMERGENCY REGULATORY ACTION SHALL REMAIN IN

CONT. . . EFFECT MORE THAN 120 DAYS UNLESS THE ADOPTING AGENCY HAS COMPLIED WITH SECTION 11346.2 - 11346.9 . . .

PENAL CODE'S 5058.2 (6) DECLARED IN PART: ANY POLICY IN EFFECT PURSUANT TO A DETERMINATION OF IMMINENT DANGER SHALL LAPSE BY OPERATION OF LAW 15 CALENDAR DAYS AFTER THE DATE OF THE WRITTEN DETERMINATION OF DANGER UNLESS AN EMERGENCY REGULATION IS FILED WITH THE OFFICE OF ADMINISTRATIVE LAW, PURSUANT TO 5058.3 .

PENAL CODE'S 5058.3 (a) (1) AND (a) (2) THE INITIAL EFFECTIVE PERIOD FOR AN EMERGENCY ADOPTION, AMENDMENT, OR REPEAL OF A REGULATION SHALL BE 160 DAYS . . . (a) (2) ONLY APPLIES TO THE INITIAL ADOPTION AND 'ONE' RE-ADOPTION OF AN EMERGENCY REGULATION .

THE COURT IN ONE CASE HAS RECENTLY VOTED IN FAVOR OF A CALIFORNIA PRISONER WHEN CCR IMPLEMENTED OTHER ILLEGAL UNDERGROUND REGULATIONS. THUS A PATTERN EXISTS BY THE STATE AGENCY .

CONCLUSION .

GOOD CAUSE EXISTING THERE OR, THIS REQUEST FOR DETERMINATION SHOULD BE CONSIDERED AND DETERMINED. IN DOING SO, FIND THAT CCR'S UNDERGROUND REGULATIONS GOVERNING THE 'DISCIPLINARY PROCESS', IN RE TO MEMORANDUM AUTHORED BY FORMER DEPUTY DIRECTOR, LARRY WITEX, DATED 2.21.02 BE WITHOUT ANY LEGAL EFFECT .

(SEE DIRECTOR'S LATEST REVIEW FOR WORDING OF MEMORANDUM.)

RESPECTFULLY SUBMITTED

Martin Martinez
MARTIN MARTINEZ

dated: 7.6.08

State of California

Memorandum

Date: February 21, 2002
 To: Wardens
 Subject: **UNAUTHORIZED POSSESSION OF RAZOR BLADES BY INMATES HOUSED IN ADMINISTRATIVE SEGREGATION UNITS, PSYCHIATRIC SERVICES UNITS, OR SECURITY HOUSING UNITS**

This memorandum will supercede instructions provided in two previous memorandums dated September 27, 1996, and January 21, 1997, by David Tristan, Deputy Director, Institutions Division, regarding razor blades defined as dangerous contraband or weapons.

Effective immediately, inmates having unauthorized possession of a razor blade(s) while on Security Housing Unit (SHU) status, Psychiatric Services Unit (PSU) status, or Administrative Segregation Unit (ASU) status may be charged with "Possession of a Deadly Weapon," a Division "A-1" offense. Additionally, any inmate attempting to introduce razor blades into any unit, or portion of a unit designated for segregated housing, to include PSU, ASU, or SHU as described in California Code of Regulations (CCR) Section 3335 and Section 3341.5, may also be charged with the Division "A-1" offense. This will include inmates being placed on Disciplinary Detention Unit (DDU) status as the result of a disciplinary hearing disposition. Modification to the razor blade, i.e., attachment of a handle or other alteration beyond removing the razor blade from its manufactured casing, is not required to support this charge.

Incidents involving inmates housed in general population having unauthorized possession of a razor blade altered from its original manufactured state should be evaluated on a case-by-case basis. Absent evidence or information which would indicate the razor blade was intended to be used as a weapon, a more appropriate charge in these types of instances may be "Possession of Contraband," as described in CCR, Section 3323(e)(3), a Division "C" offense.

Any questions regarding this memorandum should be directed to Tim Rougeux, Chief, Institution Services Unit (ISU), or Gloria Colden-Hickman, Facility Captain ISU, at (916) 323-6828.

/s/
 LARRY WITEK
 Deputy Director (A)
 Institutions Division

cc: David Tristan
 Ana Ramirez-Palmer
 Wendy Still
 Roderick Q. Hickman
 John R. Depue
 M.B. Jones
 Ombudsmen's Office (7)
 Michael Pickett
 K. W. Prunty
 Michael H. Jaime
 Gregory W. Harding
 Yvette M. Page
 Paul Bestolarides
 Gloria Rea
 William A. Duncan
 Sandi Grout
 Merrie M. Koshell
 Marilyn Kalvelage
 Ernest C. Van Sant
 Linda Rianda

**OAL REGULATORY
 DETERMINATION**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
 UNDERGROUND REGULATIONS**

**(Pursuant to Government Code
 Section 11340.5 and
 Title 1, section 270, of the
 California Code of Regulations)**

DEPARTMENT OF MENTAL HEALTH

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**2008 OAL DETERMINATION NO. 19
 (OAL FILE # CTU 2008-0129-01)**

REQUESTED BY: Michael St. Martin

CONCERNING: Department of Mental Health

**DETERMINATION
ISSUED PURSUANT TO
GOVERNMENT CODE
SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a “regulation” as defined in Government Code section 11342.600¹ and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

On January 29, 2008, Mr. St. Martin (Petitioner) submitted a petition to OAL challenging the Clinical Evaluator Handbook and Standardized Assessment Protocol (2007) (Protocol)² issued by the Department of Mental Health (DMH) as an underground regulation³ allegedly in violation of Government Code section

11340.5. California Code of Regulations, title 1, section 260(a)(3) requires that if the purported underground regulation is found in an agency manual, the petition shall identify the specific provision of the manual alleged to comprise the underground regulation. The petition included a list of ten provisions which contain the alleged underground regulation. This determination is limited to the following provisions specified in the petition:

1. Page 2, section titled “Evaluator Panel”: “Evaluators are required to interview and evaluate persons in accordance with the protocol contained within this handbook. . . .”
2. Page 2, section titled “Standardized Assessment Protocol”: “This handbook and all supplemental instructions to DMH staff and contractors in the implementation of the [Sexually Violent Predator] law is the required standardized assessment protocol.”
3. Page 4, section titled “Special requests from Courts & Attorneys”: “DMH expects that evaluators will notify the SOCP [Sex Offender Commitment Program] Unit in Sacramento of all Court Orders and Attorney Requests that do not conform to the policies and procedures. DMH will then direct the evaluator in his/her response to such orders/requests.”
4. Pages 9–11, section titled “The Clinical Interview”: This section instructs the evaluator how to conduct the interview.
5. Page 9, section titled “Beginning the SOCP Evaluation”: “In ‘update’ or ‘replacement interview,’ the court may issue an order that the evaluation be tape recorded, and/or an attorney be allowed to be present. The evaluator should comply with that order. . . .”
6. Page 11, section titled “Historical Information”: “Reliable history and prior clinical evaluations from the inmate’s records should be used to provide a basis for decision making in [Sexually Violent Predator] evaluation.”
7. Page 14, section titled “Subpoenas & Depositions”: “If you receive such a subpoena, notify DMH who will advise you how to proceed.”
8. Page 20, section titled “Psychological Testing”: “While evaluators may organize their risk assessment in their own unique way, they must rely on the guidelines of this protocol and include the following elements of risk assessment.”
9. Pages 16–32, section titled “SOCP Clinical Evaluation Protocol (Annotated)”: this section contains detailed mandatory instructions in every facet of the clinical evaluation.

¹Section 11342.600 defines regulation as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

²The terms “Protocol” and “Handbook” are used interchangeably throughout the Protocol, the comments received from the public, the Department of Health’s response, and the Petitioner’s rebuttal. We will use the term “Protocol” but the term “Handbook” may also be used when quoting from these documents.

³An underground regulation is defined in title 1, California Code of Regulations, section 250:

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

10. Page 35, section titled “[Sexually Violent Predator] Commitment Extension Evaluations”: “Since the person has been committed as [a Sexually Violent Predator] by the court for ‘appropriate treatment’ (Welf. & Inst. Code § 6604), the department believes that a person must finish the program, including the completion of a period of outpatient supervision. . . .”

DETERMINATION

OAL determines that the challenged language in the Protocol contains provisions that meet the definition of a “regulation” as defined in section 11342.600 and that those provisions should have been adopted pursuant to the APA. As noted in the response submitted by DMH, other provisions in the Protocol, which were not challenged in the petition, contain restatements of law and are not required to be adopted pursuant to the APA.

FACTUAL BACKGROUND

On January 1, 1996, the California Sexually Violent Predator (SVP) law⁴ became effective. The SVP law provides a process by which a current inmate of Department of Corrections and Rehabilitation (CDCR) can be civilly committed as a sexually violent predator and thereby becoming a patient of DMH.⁵

Pursuant to Welfare and Institutions Code section 6601, the Secretary of CDCR may determine, within six months prior to an inmate’s scheduled release date, that an inmate is a sexually violent predator as defined in Welfare and Institutions Code section 6600. If the Secretary of CDCR makes such a determination, the inmate is referred to DMH for evaluation, pursuant to “a standardized assessment protocol, developed and updated by the State Department of Mental Health.”⁶

Welfare and Institutions Code 6601 establishes the following procedure to be used if the inmate is determined by DMH to be a sexually violent predator. DMH may initiate a petition in the court in the county in which the person was convicted to have the inmate civilly committed to a state hospital. A judge in the superior court of that county must hold a probable cause hearing. If the judge finds there is no probable cause to find that the inmate is a sexually violent predator, the inmate is

returned to CDCR for parole. If the judge finds that there is probable cause to find that the inmate is a sexually violent predator, the inmate is detained in a secure facility until a jury trial can be held. The civil commitment is reviewed at least once per year. If, after this independent review, DMH determines that the individual’s diagnosed mental disorder has so changed that he or she is not likely to commit future acts of sexual violence, the civil commitment is terminated.

The Protocol, as revised in 2007, was issued by DMH and contains the procedures and protocols to be used by the independent evaluators. Welfare and Institutions Code section 6601(c) requires that a person referred from CDCR be evaluated in accordance with a standardized assessment protocol, developed and updated by DMH. The Protocol is the standardized assessment protocol required by section 6601(c).⁷

The Petitioner challenged the entire Protocol as an underground regulation and gave specific examples of provisions that were alleged underground regulations. Pursuant to California Code of Regulations, title 1, section 260(b)(3), OAL’s acceptance of the petition was limited to the examples listed in the petition. This determination is limited to those examples listed above, except when it is necessary to discuss additional provisions cited in DMH’s response.

On June 2, 2008, OAL received a response to the petition from DMH. We will address each argument in the Agency Response section below. DMH asserts:

1. The Protocol is not a regulation. “Instead, it is a guide and a uniform format to be used by clinical evaluators, psychologists and psychiatrists, to make case-specific determination using their education, experience, and expertise to form and report their opinion, in the exercise of their independent professional clinical judgment.”⁸
2. The Protocol is not applied generally. The Protocol “does not declare how a certain class of cases will be decided. While the Protocol provides elements for evaluators to follow or look for, evaluators are asked to make a determination based on their own unique knowledge, experience, and personal assessment. . . . Two evaluators could evaluate the same patient, following the same elements set forth in the Protocol and still reach different conclusion.”⁹

⁴ Welfare and Institutions Code section 6600 and following.

⁵ A person who has been referred by CDCR to DMH for evaluation as an SVP is an “inmate” of CDCR. If that person is determined to be an SVP, he or she is transferred to a state hospital under the jurisdiction of DMH and is no longer an inmate of a CDCR prison. The SVP is then referred to as a “patient” or “individual.”

⁶ Welfare and Institutions Code section 6601(c).

⁷ Page 2 of the Protocol, section titled “Standardized Assessment Protocol”

⁸ Page 3 of the response.

⁹ Page 3 of the response.

3. "The evaluations performed with the Protocol and resulting reports are clinical evaluations, necessarily requiring the exercise of specialized, professional clinical judgment. . . . Since the available studies and literature are constantly being augmented, the clinical standards of the professions of psychology and psychiatry evolve over time, the DMH does not have authority to dictate or control the standards or clinical profession of psychology or psychiatry."¹⁰
4. "The Protocol leaves the professional evaluation process in the hands of the evaluator. For example, it does not limit the factors the evaluator may consider in reaching an evaluation outcome. . . . [T]he Protocol expressly states that the evaluator, not the Protocol, will determine the evaluation's outcome."¹¹
5. "The Protocol is not quasi-legislative. The Protocol sets forth a format for the professionals to use for court reports. . . . [I]t does not tell the evaluator what determination to make. . . . While the format for the court report is intended to apply generally to all SVP reports, the format of the report in no way dictates the opinion of the evaluator."¹²
6. Specified provisions of the Protocol are restatements of the Welfare and Institutions Code.¹³

OAL received several comments from the public. The majority of the comments were from different regional offices of Protection and Advocacy, Inc. The comments uniformly expressed agreement with the arguments in the petition and support a finding that the challenged provisions in the Protocol meet the definition of a regulation. The commenters emphasized that evaluators are required to follow the Protocol and are not permitted to perform the evaluations in any manner not found in the Protocol.

On June 17, 2008, OAL received the Petitioner's rebuttal to DMH's response to the petition. The rebuttal reiterates the arguments made in the petition and disagrees with the arguments made in DMH's response.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states as follows:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion,

bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency issued, utilized, enforced, or attempted to enforce a rule that meets the definition of a "regulation" as defined in section 11342.600 that should have been adopted pursuant to the APA. OAL's determination that an underground regulation was created is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

ANALYSIS

A determination of whether the challenged rule is a "regulation" subject to the APA depends on (1) whether the challenged rule meets the definition of a "regulation" within the meaning of section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).

¹⁰ Page 5 of the response.

¹¹ Page 6 of the response.

¹² Page 6 of the response.

¹³ Page 7 of the response.

The first element of a regulation is whether the rule applies generally. As *Tidewater* pointed out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. We will look at each of the challenged provisions in turn to determine if it applies to a clearly defined class of persons or situations:

1. Page 2, section titled "Evaluator Panel": "Evaluators are required to interview and evaluate persons in accordance with the protocol contained within this handbook. . . ."

This provision applies to all evaluators. Evaluators are a clearly defined class of persons. Additionally, the provision applies to all CDCR inmates referred to DMH for evaluation pursuant to the SVP law because it mandates how the evaluation is to be conducted. Both evaluators and inmates are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

2. Page 2, section titled "Standardized Assessment Protocol": "This handbook and all supplemental instructions to DMH staff and contractors in the implementation of the SVP law is the required standardized assessment protocol."

As with challenged provision 1, the requirement for DMH staff and contractors to use the Protocol in implementing the SVP law applies to evaluators, DMH staff and the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

3. Page 4, section titled "Special requests from Courts & Attorneys": "DMH expects that evaluators will notify the SOCP [Sex Offender Commitment Program] Unit in Sacramento of all Court Orders and Attorney Requests that do not conform to the policies and procedures. DMH will then direct the evaluator in his/her response to such orders/requests."

This requirement applies to evaluators, DMH staff and the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

4. Pages 9–11, section titled "The Clinical Interview": This section instructs the evaluator how to conduct the interview and includes the information the evaluator must give to the inmate. For example:

- a. The evaluator should begin by describing the interview process
- b. The inmate should be asked to sign a form providing information about Welfare and Institutions Code section 6600, the SVP law.
- c. The evaluator should comply with a court order to tape record an "update" or "replacement" interview.

- d. The section acknowledges that there are various approaches to interviewing sex offenders and the approach and structure of the interview is made by the evaluator. The Protocol specifies the questions that must be answered and the formats to be used.

This requirement applies to evaluators and also to the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

5. Page 9, section titled "Beginning the SOCP Evaluation": "In 'update' or 'replacement interview,' the court may issue an order that the evaluation be tape recorded, and/or an attorney be allowed to be present. The evaluator should comply with that order. . . ."

This provision is part of challenged provision 4, above. This requirement applies to evaluators and also to the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

6. Page 11, section titled "Historical Information": "Reliable history and prior clinical evaluations from the inmate's records should be used to provide a basis for decision making in SVP evaluation."

This requirement applies to evaluators and also to the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

7. Page 14, section titled "Subpoenas & Depositions": "If you receive such a subpoena, notify DMH who will advise you how to proceed."

This requirement applies to evaluators. This is a clearly defined class; therefore, the first element of *Tidewater* is met for this provision.

8. Page 20, section titled "Psychological Testing": "While evaluators may organize their risk assessment in their own unique way, they must rely on the guidelines of this protocol and include the following elements of risk assessment." The elements include approaches to risk assessment, actuarial risk assessment and adjusting an actuarial risk score.

This requirement applies to evaluators and also to the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

9. Pages 16–32, section titled "SOCP Clinical Evaluation Protocol (Annotated)": this section contains detailed mandatory instructions in every facet of the clinical evaluation. For example,
 - a. The evaluator must include specific identifying information;

b. The evaluation must contain answers to specific questions such as:

- i. Has the inmate been convicted of a sexually violent criminal offense specified in WIC 6600 against one or more victims. This question includes a discussion of what information must be included (the use of force, violence, etc., any prior determinations that the inmate was a Mentally Disordered Sex Offender, etc.) Requirements for how the information should be presented in the evaluation are also included;
- ii. Does the inmate have a diagnosed mental disorder that predisposes the person to the commission of criminal sexual acts? This question is followed by a detailed discussion of the “diagnosed mental disorder” and how that diagnosis is arrived at.

The requirements in this section apply to evaluators and also to the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

10. Page 35, section titled “SVP Commitment Extension Evaluations”: “Since the person has been committed as an SVP by the court for ‘appropriate treatment’ (Welf. & Inst. Code § 6604), the department believes that a person must finish the program, including the completion of a period of outpatient supervision. Only under unusual circumstances would a patient being evaluated for SVP commitment extension be deemed unlikely to commit future sexually violent acts as a result of a mental disorder, if all five phases of treatment have not been completed. If this is the case, the evaluator is required to consult with the Department on their conclusion.”

The requirements in this section apply to evaluators and also to the inmates being evaluated. These are clearly defined classes; therefore, the first element of *Tidewater* is met for this provision.

The first element of *Tidewater* is, therefore, met for all the challenged provisions in the Protocol.

The second element of *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. The SVP law requires inmates who are referred by CDCR to DMH as possible sexually violent predators to be evaluated by DMH. Pursuant to Welfare and Institutions Code section 6601(c) and (d), DMH must evaluate the person in accordance with a standardized assessment protocol, developed and updated by DMH to determine whether the person is a sexually vio-

lent predator. The standardized assessment protocol must require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. The risk factors which must be considered include criminal and psychosexual history, type, degree, and duration of sexual deviation and severity of mental disorder. The evaluation must be made by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist designated by DMH.¹⁴

On page 2 of the Protocol, DMH states:

[Welfare and Institutions Code] Section 6601(c) requires that a person referred from CDCR be evaluated in accordance with a standardized assessment protocol, developed and updated by the DMH. This clinical evaluator handbook is the centerpiece of that protocol. This handbook may be supplemented by additional instructions to clinical evaluators as necessary. *This handbook and all supplemental instructions to DMH staff and contractors in the implementation of the SVP law is the required standardized assessment protocol.* (Emphasis added.)

The challenged provisions of the Protocol contain detailed requirements the evaluator must use to make the risk assessment required by Welfare and Institutions Code section 6601(c). For example, the challenged provisions require that the evaluator ask specific questions of the inmate, that the evaluator notify DMH of requests from the court or attorneys, and that the clinical interview provide specific information to the inmate. The Protocol itself states that it implements the SVP law which is enforced or administered by DMH.¹⁵ Hence, the challenged provisions of the Protocol implement or make specific the SVP law or govern DMH’s procedures implementing the SVP law.

The second element in *Tidewater* is therefore met.

Finding that both elements of *Tidewater* have been met, OAL concludes that the challenged provisions of the Protocol meet the definition of a “regulation” as defined in section 11342.600.

The final issue to examine is whether the challenged provisions of the Protocol fall within an exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies.¹⁶ Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to section 11346, the procedural requirements established in the APA “shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.”

¹⁴ Welfare and Institutions Code section 6601(c) and (d).

¹⁵ Page 2 of the response.

¹⁶ See Government Code section 11340.9.

We find no APA exemptions that would apply to the Protocol. DMH has not identified any express exemption from the APA that would include the Protocol.

As noted in DMH's response to the petition, some provisions in the Protocol, which were not challenged in the petition, are restatements of existing law. A restatement is not an exemption from the APA; rather, it repeats the law and does not further implement, interpret or make specific any provision of law. A restatement does not need to be adopted pursuant to the APA. Examples of restatements in the Protocol are:

1. Appendix A restates Welfare and Institutions Code section 6600 and the following sections in their entirety.
2. The Introduction includes a summarization of the requirements of the SVP law without further implementing, interpreting or making specific the SVP law.
3. The section titled "Evaluator Liability" on page 2 restates Penal Code section 1618.
4. The section titled "Definitions Relevant to SOCP" on page 6 contains a list of definitions restated from various Penal Code sections.

Such restatements do not meet the definition of "regulation" and are, therefore, not required to be adopted pursuant to the APA.¹⁷

AGENCY RESPONSE

As noted above, in its response DMH makes several arguments. We will address each in turn.

1. The Protocol is not a regulation. "Instead, it is a guide and a uniform format to be used by clinical evaluators, psychologists and psychiatrists, to make case-specific determination using their education, experience, and expertise to form and report their opinion, in the exercise of their independent professional clinical judgment."¹⁸

We disagree with DMH's argument. A regulation is defined in Government Code section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

¹⁷ The definition of "regulation" in Government Code section 11342.600 means that the rule must "implement, interpret or make specific" the law enforced or administered by a state agency, or govern its procedure. A restatement of existing law is not an interpretation or implementation of that law.

¹⁸ Page 3 of the response.

The challenged sections of the Protocol establish standards every evaluator must follow. On page 11, the Protocol states

While this Evaluator Handbook *specifies the questions that must be answered and formats to be used*, it does not address everything an evaluator may need to consider. (Emphasis added.)

While the Protocol may be characterized as a "guide and a uniform format," the Protocol, by its own terms, is a document which the evaluators must use.¹⁹ It contains specific instructions to the evaluators on how to conduct an evaluation, the questions they must ask, how to submit their findings, etc. The Protocol states: "All evaluations are assigned, supervised, and submitted to SOCP Evaluation Unit in Sacramento in accordance with instructions contained in this handbook."²⁰ By imposing these requirements on evaluators, the Protocol meets the definition of "regulation."

2. The Protocol is not applied generally. The Protocol "does not declare how a certain class of cases will be decided. While the Protocol provides elements for evaluators to follow or look for, evaluators are asked to make a determination based on their own unique knowledge, experience, and personal assessment. . . . Two evaluators could evaluate the same patient, following the same elements set forth in the Protocol and still reach different conclusion."²¹

OAL disagrees with this argument. In its analysis of the first element of *Tidewater, supra*, OAL determined that the challenged provisions of the Protocol are rules of general application because they apply to the class of evaluators and/or inmates. The Protocol requires that evaluators to conduct the evaluations in a specific way by asking specific questions or making specific findings. The conclusion reached by an individual evaluator may be based upon his or her "unique knowledge, experience, and personal assessment" but the standards to be used, the questions to be asked, and the conduct of the evaluation are mandated by the Protocol.

3. "The evaluations performed with the Protocol and resulting reports are clinical evaluations, necessarily requiring the exercise of specialized, professional clinical judgment. . . . Since the available studies and literature are constantly being augmented, the clinical standards of the professions of psychology and psychiatry evolve over time, the DMH does not have authority to dictate or control the standards or clinical profession of psychology or psychiatry."²²

¹⁹ Page 2 of the Protocol.

²⁰ Page 2 of the Protocol.

²¹ Page 3 of the response.

²² Page 5 of the response.

We agree that DMH does not have the authority to dictate or control the standards or clinical profession of psychology or psychiatry. However, the Protocol does mandate how the evaluation is conducted and how the results of the evaluation are presented. For example, on page 9 of the Protocol (in the challenged provision listed above as number 4), in the section titled "Drawing Clinical Conclusions," the Protocol states:

Each evaluator should produce a report that represents his or her best judgment. Clearly state definitive opinions with a YES or NO answer to each clinical question are required. At times, the facts may be conflicting or incomplete, making an unequivocal clinical opinion impossible. If, after review of all the information available, you are unable to support an affirmative conclusion regarding a criterion, then that criterion has not been met and the answer is **NO**.

This is an example of language in the Protocol that requires the evaluation to be conducted in specified manner, that specific clinical questions be asked, and the submission of the result to be in a specified manner. The evaluator is required to adhere to these standards and procedures.

4. "The Protocol leaves the professional evaluation process in the hands of the evaluator. For example, it does not limit the factors the evaluator may consider in reaching an evaluation outcome. . . . [T]he Protocol expressly states that the evaluator, not the Protocol, will determine the evaluation's outcome."²³

We agree that the evaluation is based upon the evaluator's professional opinion; however, the procedures and requirements for the evaluation are contained in the Protocol. The evaluator is required to follow these procedures. The outcome of the evaluation may be the opinion of the evaluator, but that opinion is developed by complying with the required procedures and standards.

5. "The Protocol is not quasi-legislative. The Protocol sets forth a format for the professionals to use for court reports. . . . [I]t does not tell the evaluator what determination to make. . . . While the format for the court report is intended to apply generally to all SVP reports, the format of the report in no way dictates the opinion of the evaluator."²⁴

The issue in this determination is not that compliance with the Protocol will result in a specific outcome. Rather the issue is whether the procedures and standards in the Protocol which all evaluators are required

to use "implement, interpret, or make specific the law enforced by the agency; or govern the agency's procedure."²⁵

As noted above, Welfare and Institutions Code section 6601(c) requires that a person referred from CDCR be evaluated in accordance with a standardized assessment protocol, developed and updated by DMH. The Protocol itself states that it is the required standardized assessment protocol.²⁶ The Protocol clearly implements, interprets, or makes specific the law enforced by the agency, or governs the agency's procedure.

6. Specified provisions of the Protocol are restatements of the Welfare and Institutions Code.²⁷

We agree that many provisions of the Protocol are restatements of the Welfare and Institutions Code. A restatement of law does not meet the definition of a "regulation" because it does not "implement, interpret, or make specific the law enforced by the agency; or govern the agency's procedure."²⁸ Restatements, then, are not required to be adopted as regulations pursuant to the APA. To the extent that the Protocol contains solely restatements of law, those provisions are not underground regulations.

CONCLUSION

The challenged provisions in the "Clinical Evaluator Handbook and Standardized Assessment Protocol (2007)" issued by DMH meet the definition of a "regulation" as defined in section 11342.600 that should have been adopted pursuant to the APA. The Protocol also contains provisions that were not challenged in the petition that merely restate existing law, as noted in DMH's response. The restatements of law do not meet the definition of "regulation" and are not required to be adopted pursuant to the APA.

Date: August 15, 2008

/s/
Susan Lapsley
Director

/s/
Kathleen Eddy
Senior Staff Counsel

²³ Page 6 of the response.

²⁴ Page 6 of the response.

²⁵ *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571.

²⁶ Page 2 of the Protocol, section titled "Standardized Assessment Protocol"

²⁷ Page 7 of DMH's response.

²⁸ *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2008-0710-03
BUREAU OF AUTOMOTIVE REPAIR
Consumer Assistance Program Application Revisions (CAP/APP (02/08))

This change without regulatory effect modifies the Department of Consumer Affairs Bureau of Automotive Repair Consumer Assistance Program Application form to conform to changes made to title 16 California Code of Regulations Section 3394.4 regarding the extension of time for consumers to apply for vehicle retirement financial assistance and to conform to California Health and Safety Code provisions regarding the Gold Shield program for vehicle inspection and repair and to reference current federal poverty level guidelines.

Title 16
California Code of Regulations
AMEND: 3394.6
Filed 08/13/2008
Agency Contact: Virginia Vu (916) 255-2135

File# 2008-0718-01
CALIFORNIA HIGHWAY PATROL
Fleet Owner Inspection and Maintenance Stations

This regulatory action amends regulations governing the issuance and use of Fleet Owner Inspection and Maintenance Station (IMS) licenses and provides a process for requesting exemption from the regulations.

Title 13
California Code of Regulations
ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1
Filed 08/13/2008
Effective 09/12/2008
Agency Contact: Don Callaway (916) 445-1865

File# 2008-0806-01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

The Department of Food and Agriculture amends Title 3, section 3434(b) to expand the current interior quarantine areas in the counties of Marin, Monterey and Santa Clara.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 08/13/2008
Effective 08/13/2008
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0815-01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This emergency regulatory action will expand the existing regulated quarantine area in Monterey County by approximately six square miles and establish a new area of approximately 14 square miles surrounding the Parkfield area as an area of quarantine in Monterey County for the light brown apple moth ("Epiphyas postvittana") due to recent findings of the pest.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 08/18/2008
Effective 08/18/2008
Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0731-03
DEPARTMENT OF PESTICIDE REGULATION
Respiratory Protection

These nonsubstantive amendments correct two internal cross references and several grammatical errors.

Title 3
California Code of Regulations
AMEND: 6738, 6739
Filed 08/18/2008
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

File# 2008-0703-04
DEPARTMENT OF REAL ESTATE
Mortgage Loan Disclosure Regulations

This Certificate of Compliance makes permanent the prior emergency action (OAL file no. 2008-0102-01E) that added provisions to the forms used for purposes of satisfying required disclosure statements, such as, expanded information regarding loan terms, information regarding possible increased costs of "no documentation" or "no asset" loans, increased disclosures of pre-

payment penalty information, and information regarding real estate taxes and insurance that must be paid. New section 2844 establishes lending practices related to nontraditional and subprime mortgage products for real estate brokers newly covered by SB 385 (Stats. 2007, c. 301).

Title 10
California Code of Regulations
ADOPT: 2844 AMEND: 2840, 2842
Filed 08/15/2008
Agency Contact: David B. Seals (916) 227-0789

File# 2008-0812-02
FISH AND GAME COMMISSION
Incidental Take of Longfin Smelt

This emergency readoption of 14 CCR section 749.3 maintains the restrictions and permissible take of longfin smelt while the species undergoes evaluation for listing as an endangered species consistent with the California Endangered Species Act.

Title 14
California Code of Regulations
AMEND: 749.3
Filed 08/18/2008
Effective 08/27/2008
Agency Contact: Jon F. Fischer (916) 653-6184

File# 2008-0703-02
MANAGED RISK MEDICAL INSURANCE BOARD
AIM Reduced Rates After 1st Trimester Miscarriage & Clarification of Procedures

This action allows women enrolled in the AIM program that are no longer pregnant at the end of what would have been their first trimester of pregnancy to be relieved of the obligation to pay the other 2/3 of their assessment for participation in the program.

Title 10
California Code of Regulations
AMEND: 2699.100, 2699.201, 2699.205, 2699.207, 2699.209, 2699.400
Filed 08/14/2008
Effective 08/14/2008
Agency Contact: Randi Turner (916) 327-8243

File# 2008-0801-02
MEDICAL BOARD OF CALIFORNIA
Disciplinary Guidelines

This amendment to Section 1361 of title 16 removes reference to the "Division of Medical Quality of the Medical Board of California" because AB 253 (Chapter

678, Stats. 2007) abolished the divisions of the Medical Board of California effective January 1, 2008. Additionally, the "Manual of Disciplinary Guidelines and Model Disciplinary Orders," incorporated by reference in the regulation, has also been amended to delete the Medical Board's Diversion Program, which was sunset by Business and Professions Code section 2358, effective July 1, 2008.

Title 16
California Code of Regulations
AMEND: 1361
Filed 08/15/2008
Effective 09/14/2008
Agency Contact: Kevin A. Schunke (916) 263-2368

File# 2008-0708-01
STATE ALLOCATION BOARD
Leroy F. Green School Facilities Act of 1998; Joint Use Program

This regulatory action is to clarify the requirements of non-profit organizations to qualify as "Joint-Use Partners" in the School Facility Joint-Use Program, to clarify program requirements regarding the use of local bond measure funds, and to change the application filing timeframes.

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129
Filed 08/14/2008
Effective 08/14/2008
Agency Contact: Robert Young (916) 445-0083

File# 2008-0721-02
STATE MINING AND GEOLOGY BOARD
Vested Rights Determination

This is the resubmission of an action that establishes the procedure for a public proceeding to be used by the Board when acting as the lead agency and determining whether a right to conduct mining on real property preceded zoning or another land use restriction with which such use does not conform. Such rights are known as vested mining rights.

Title 14
California Code of Regulations
ADOPT: 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965
Filed 08/14/2008
Effective 09/13/2008
Agency Contact: Stephen Testa (916) 322-1082

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN MARCH 19, 2008 TO
AUGUST 20, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

04/24/08 AMEND: Appendix A

Title 2

08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129
08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905
07/16/08 ADOPT: 18946.6
07/10/08 AMEND: 1859.76, 1859.83, 1859.104.3
07/10/08 AMEND: 1859.71
07/08/08 AMEND: 2271
06/26/08 AMEND: 554.2, 554.3
06/17/08 ADOPT: div. 8, ch. 112, sec. 59570
06/11/08 AMEND: 18360, 18361
06/11/08 ADOPT: 18421.7 AMEND: 18401
06/11/08 ADOPT: 18944.2 REPEAL: 18944.2
05/21/08 ADOPT: 59580
05/14/08 ADOPT: 18413
05/13/08 ADOPT: 59620
05/06/08 AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009
04/30/08 AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)
04/29/08 ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05 (Revised 01/08), Form SAB 50-10 (Revised 01/08)
04/24/08 ADOPT: 1183.081, 1183.131, 1183.30, 1183.31, 1183.32 AMEND: 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.04, 1183.08, 1183.11, 1183.13, 1183.14, 1183.3, 1188.3
04/10/08 AMEND: 1866, 1866.4.3, 1866.13, Form SAB 40-22 (Rev. 10/07)

04/09/08 AMEND: 18997
03/28/08 ADOPT: 59630
03/24/08 AMEND: 18735
03/19/08 AMEND: 55300
03/19/08 AMEND: 549.90
03/19/08 AMEND: 18200

Title 3

08/18/08 AMEND: 6738, 6739
08/18/08 AMEND: 3434(b)
08/13/08 AMEND: 3434(b)
08/12/08 AMEND: 3406(b)
08/11/08 AMEND: 3406(b)
08/01/08 AMEND: 3589(a)
08/01/08 ADOPT: 3591.22
07/28/08 AMEND: 3434(b)
07/25/08 AMEND: 902.9
07/24/08 ADOPT: 3591.21
07/22/08 AMEND: 3417(b)
07/16/08 AMEND: 3700
07/16/08 AMEND: 3406
07/14/08 AMEND: 3963
07/11/08 AMEND: 3434(b)
07/09/08 AMEND: 3434(b)
06/30/08 AMEND: 3589(a)
06/24/08 AMEND: 3963
06/24/08 AMEND: 3060.3
06/23/08 AMEND: 3591.5(a)
06/17/08 AMEND: 2751
06/16/08 AMEND: 3434(b)
06/11/08 AMEND: 3434(b)
06/09/08 AMEND: 3700
06/04/08 AMEND: 3434(b)
05/23/08 AMEND: 3434(b)
05/23/08 AMEND: 1438.7, 1438.17
05/07/08 AMEND: 3434(b)
05/05/08 AMEND: 3406(b)
05/02/08 AMEND: 3417(b)
05/02/08 AMEND: 3434
04/30/08 AMEND: 3591.20
04/23/08 AMEND: 6550
04/21/08 AMEND: 3700
04/18/08 AMEND: 3434(b)
04/16/08 AMEND: 3434(b) & (c)
04/15/08 AMEND: 3433(b)
04/08/08 AMEND: 3434(b)
04/02/08 AMEND: 3433(b)
04/02/08 AMEND: 3433(b)
04/01/08 ADOPT: 821, 821.1, 821.2, 821.3, 821.4, 821.5 REPEAL: 784, 784.1, 784.2, 800, 800.1, 801, 802
03/26/08 AMEND: 3434(b)
03/21/08 AMEND: 3434(b)
03/19/08 AMEND: 6620

Title 4

08/12/08 ADOPT: 4180, 4181
 08/08/08 AMEND: 12002, 12100, 12101, 12120, 12122, 12128, 12130, 12140, 12200, 12200.3, 12200.7, 12200.9, 12200.10A, 12200.10B, 12200.10C, 12200.11, 12200.13, 12200.14, 12200.16, 12200.17, 12200.18, 12200.20, 12200.21, 12201, 12202, 12203, 12203A, 12203.1, 12203.2, 12203.3, 12203.5, 12204, 12205, 12205.1, 12218, 12218.1, 12218.5, 12218.7, 12218.11, 12220, 12220.3, 12220.13, 12220.14, 12220.16, 12220.18, 12220.20, 12220.20A, 12220.21, 12220.23, 12221, 12222, 12223, 12224, 12225, 12225.1, 12233, 12234, 12235, 12236, 12300, 12301, 12301.1, 12302, 12303, 12304, 12305, 12306, 12308, 12309, 12310, 12335, 12341, 12342, 12343, 12344, 12345, 12347, 12358, 12359, 12360, 12370, 12400, 12401, 12402, 12403, 12404, 12405, 12460, 12463, 12464, 12466, 12550, 12552, 12554, 12556, 12558, 12560, 12562, 12564, 12566, 12568, 12590
 08/04/08 AMEND: 1843.2
 07/14/08 AMEND: 8070, 8072, 8073
 07/10/08 AMEND: 1481, 1783, 1784
 06/24/08 ADOPT: 12335, 12340, 12357 AMEND: 12342, 12343, 12344, 12345, 12358, 12359
 05/23/08 ADOPT: 1843.3 AMEND: 1843.2
 05/01/08 AMEND: 1844
 04/08/08 AMEND: 1467
 03/24/08 AMEND: 10177, 10178, 10181, 10182, 10187, 10188, 10189

Title 5

08/11/08 AMEND: 41000
 08/04/08 ADOPT: 15575, 15576, 15577, 15578
 07/16/08 AMEND: 18272
 06/24/08 AMEND: 80021
 06/19/08 AMEND: 4600(l)
 06/13/08 ADOPT: 55185, 57017 AMEND: 55180, 57001.7, 58003.4, 58770, 58771, 58774
 06/10/08 AMEND: 30910, 30911, 30912, 30913, 30914, 30916
 06/10/08 AMEND: 30920, 30921, 30922, 30923, 30924, 30925, 30927
 06/09/08 ADOPT: 19828.3, 19837.2 AMEND: 19816, 19816.1, 19828.2, 19837.1, 19846

05/28/08 ADOPT: 18085.5, 18086.1 AMEND: 18086, 18087, 18088, 18091, 18101, 18102, 18104

05/21/08 ADOPT: 6105 AMEND: 6100, 6104

05/13/08 AMEND: 15440, 15441, 15442, 15443, 15444, 15445, 15446, 15447, 15448, 15449, 15450, 15451, 15452, 15453, 15454, 15455, 15456, 15457, 15458, 15459, 15460, 15461, 15462, 15463, 15464, 15467, 15468, 15469, 15471, 15471.1, 15471.2, 15472, 15473, 15474, 15475, 15476, 15477, 15478, 15479, 15479.5, 15480, 15481, 15483, 15484, 15485, 15486, 15487, 15488, 15489, 15490, 15493

05/05/08 ADOPT: 11315.5 and 11315.6 AMEND: 11315

05/01/08 AMEND: 80440, 80443

04/21/08 ADOPT: 18134

04/21/08 ADOPT: 18134

Title 7

06/10/08 ADOPT: 236.1

Title 8

08/08/08 AMEND: 1532.1

08/04/08 AMEND: 3649

08/04/08 AMEND: Appendix C following section 560, Appendices A, B, and C following section 1938, and section 5001

07/30/08 AMEND: 1524

07/18/08 AMEND: 290.0, 290.1, 291.0, 291.1, 291.2, 291.5, 292.0, 294.0, 295.0, 296.0, 296.1, 296.2, 296.3, 296.4

07/18/08 AMEND: 2500.7

07/17/08 AMEND: 4885, 4924, 5004

07/17/08 AMEND: 1604.24, 1604.26

07/14/08 AMEND: Appendix B following 1541.1

06/30/08 ADOPT: 4300.1 AMEND: 4297, 4300

06/06/08 AMEND: 1710(k)(2)

05/19/08 AMEND: 1529, 5208, 8358

05/19/08 AMEND: 1710

05/19/08 AMEND: 797, 1604.10, 1601.21, 1662

05/05/08 ADOPT: 2340.2, 2340.5, 2340.8, 2340.10, 2340.12, 2340.14; Article 6, Sections 2360.1 through 2360.5; Sections 2375.7, 2375.25, 2380.1, 2390.10, 2390.20, Article 12, Sections 2400.1, 2400.2; Sections 2418.2, 2418.3, 2418.4, 2418.5, 2418.6, 2420.4, 2420.5, 2420.6, 2420.7, 2473.1, 2473.2, 2480.5, 2480.9, 2484.5, 2484.6; Article 48.1, Sections 2485.1, 2485.2; Sections 2505.2, 2510.8, 2522.20, 2530.120, 2530.121; Article

58.1, Section 2535.1; Sections 2540.11, 2540.11 Figure S-1, 2560.3; Article 74.1, Sections 2562.1 through 2562.7; Article 77.1, Sections 2566.1 through 2566.3; Article 77.2, Sections 2567.1 through 2567.3; Sections 2569.5, 2571.9, 2571.30; Article 83, Sections 2583.1 through 2583.8; Article 84, Sections 2584.1 through 2584.8; Article 85, Sections 2585.1 through 2585.3; Article 86, Sections 2586.1 through 2586.4; Article 87, Sections 2587.1 through 2587.5; Article 88, Sections 2588.1 through 2588.3; Article 89, Sections 2589.1 and 2589.2. AMEND: 2300, 2305.2, 2305.4, 2340.9, 2340.11, 2340.13, 2340.16, Table 2340.16, 2340.17, 2340.18, 2340.21, 2340.22; Article 5, Section 2350.2; Sections 2375.1, 2375.18, Table 2375.18, Sections 2375.19, 2390.1, 2390.24, 2390.41, 2390.81, 2395.3, 2395.5, 2395.6, 2395.23, 2395.25, 2395.32, 2395.42, 2395.44, 2395.45, 2395.57, 2395.58, 2405.1, 2405.2; Article 16, Sections 2420.3; Article 45; Sections 2480.6, 2480.7, 2484.24, 2500.7, 2500.8, 2500.9, 2500.10, 2500.11, 2500.23, 2505.10, 2505.11, 2510.4, 2510.5, 2510.6, 2510.7, 2510.56, 2510.58, 2522.2, 2530.4, 2530.102, 2530.103, 2530.104, 2530.107, 2530.112, 2533.1, 2534.6, 2534.8, 2540.1, 2540.2, 2540.3, 2540.4, 2560.2, 2561.1, 2561.3, 2561.31, 2561.32, 2563.23, 2563.33; Article 77, Section 2565.3; Sections 2568.8, 2568.15, 2569.1, 2569.6, 2569.7, 2569.20, 2569.51; Article 80, Sections 2571.1 and 2571.16. REPEAL: 2340.23, 2350.11, 2390.83, 2395.7, 2395.33, 2395.43, 2395.50, 2480.8, 2522.8 and 2561.50.

04/11/08 AMEND: 7016(c)

04/07/08 AMEND: 10116, 10116.1, 10117.1, 10118.1, 10119, 10120, 10121, 10136, 10137, 10225, 10225.1, 10225.2

04/01/08 ADOPT: 3140, 3141, 3141.1, 3141.2, 3141.3, 3141.4, 3141.5, 3141.6, 3141.7, 3141.8, 3141.9, 3141.10, 3141.11, 3141.12, 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, 3146 AMEND: 3000, 3001, 3009, 3094.2, 3120.6, 3137

Title 9

07/11/08 ADOPT: 1810.207.5, 1810.220.5
AMEND: 1830.220

07/02/08 AMEND: 9515(d), 10522(b)

Title 10

08/15/08 ADOPT: 2844 AMEND: 2840, 2842

08/14/08 AMEND: 2699.100, 2699.201, 2699.205, 2699.207, 2699.209, 2699.400

08/04/08 AMEND: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117 REPEAL: 5119

07/30/08 AMEND: 2498.6

07/24/08 AMEND: 2498.4.9

07/23/08 AMEND: 2498.4.9

07/23/08 AMEND: 2498.4.9

07/21/08 ADOPT: 2330.1, 2330.3, 2330.4, 2330.5

07/17/08 AMEND: 2498.6

07/10/08 REPEAL: 2191

07/10/08 AMEND: 2699.6611

07/07/08 ADOPT: 2699.6602, 2699.6604
AMEND: 2699.6603, 2699.6605, 2699.6607, 2699.6608, 2699.6611, 2699.6625

06/24/08 ADOPT: 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, 2232.45.5
AMEND: 2536.2

06/16/08 AMEND: 2318.6, 2353.1

06/02/08 ADOPT: 10.190202

05/27/08 AMEND: 2249.2-2249.9, 2249.12, 2249.15

05/16/08 ADOPT: 2642.8, 2644.28 AMEND: 2642.6, 2642.7, 2644.2, 2644.3, 2644.6, 2644.7, 2644.8, 2644.12, 2644.16, 2644.17, 2644.19, 2644.20, 2644.21, 2644.23, 2644.25, 2644.27

04/30/08 AMEND: 2697.6, 2697.61

04/29/08 ADOPT: 10.19900, 10.19901

04/28/08 AMEND: 310.111

03/27/08 AMEND: 2699.6500, 2699.6805, 2699.6803

03/20/08 AMEND: 1950.314.8

Title 11

07/08/08 ADOPT: 30.14

06/17/08 AMEND: 1005, 1007, 1008, 1080

05/28/08 AMEND: 2000, 2001, 2010, 2020, 2030, 2037, 2038, 2050, 2051, 2052, 2053, 2060, 2070, 2071, 2072, 2140

04/14/08 AMEND: 1081

Title 13

08/13/08 ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1

07/15/08 AMEND: 440.04

06/16/08 ADOPT: 156.01
 06/16/08 AMEND: 1961, 1965
 06/10/08 AMEND: 2222
 06/02/08 AMEND: 1141
 05/16/08 ADOPT: 2449, 2449.1, 2449.2, 2449.3
 05/01/08 AMEND: 1
 04/28/08 AMEND: 120.00, 120.01, 120.02,
 124.93, 124.95 REPEAL: 120.04
 04/10/08 AMEND: 1202.1, 1202.2, 1232
 04/07/08 AMEND: 2451, 2452, 2453, 2458, 2461

Title 13, 17

07/02/08 AMEND: 2299.1, 93118

Title 14

08/18/08 AMEND: 749.3
 08/14/08 ADOPT: 3950, 3951, 3952, 3953, 3954,
 3955, 3956, 3957, 3958, 3959, 3960,
 3961, 3962, 3963, 3964, 3965
 08/12/08 ADOPT: 124
 08/11/08 AMEND: 503
 08/06/08 AMEND: 815.05, 818.02, 825.05,
 827.02
 07/28/08 AMEND: 702
 07/23/08 AMEND: 7.50
 07/15/08 ADOPT: 4860
 07/08/08 ADOPT: 124.1 AMEND: 122, 125,
 149.1, 150, 150.02, 150.03, 150.05, 163,
 163.5, 164, 174, 180.3
 07/02/08 AMEND: 7.50
 07/01/08 AMEND: 27.80
 06/30/08 AMEND: 120.7
 06/23/08 AMEND: 18660.23, 18660.24,
 18660.25, 18660.33, 18660.34
 06/20/08 AMEND: 360, 361, 362, 363, 364, 551,
 708, 712
 06/18/08 ADOPT: 355
 06/16/08 AMEND: 10602, 10800
 05/15/08 AMEND: 353, 475
 05/09/08 AMEND: 27.20, 27.25, 27.30, 28.26,
 28.27, 28.28, 28.29, 28.48, 28.49, 28.51,
 28.52, 28.53, 28.54, 28.55, 28.56, 28.57,
 28.58
 05/02/08 AMEND: 825.05
 04/28/08 ADOPT: 17987, 17987.1, 17987.2,
 17987.3, 17987.4, 17987.5
 04/28/08 AMEND: 815.05
 04/25/08 AMEND: 17210.2, 17210.4, 17855.2,
 17862, 17867
 04/07/08 AMEND: 228(b)(1)
 04/04/08 AMEND: 27.80
 03/26/08 AMEND: 630

Title 15

08/04/08 AMEND: 2041
 08/04/08 AMEND: 3000, 3005, 3006, 3008, 3009,
 3011, 3012, 3013, 3015, 3016, 3290,

3310, 3313, 3314, 3315, 3317, 3318,
 3320, 3323, 3327, 3328
 07/30/08 ADOPT: 3503, 3505, 3506, 3507, 3508,
 3509, 3510, 3511, new Article 2 and title,
 3520, 3521, 3521.1, 3521.2, 3521.3,
 3521.4, 3521.5, 3521.6, 3522, 3523,
 3524, 3525, 3526, 3527, new Article 3
 and title, 3540, 3541, 3542, 3543, 3544,
 3545, 3546, 3547, 3548, 3549, new
 Article 4 and title, 3560, 3561, 3562,
 3563, 3564, new Article 5 and title, 3570,
 3571, new Article 6 and title, 3580,
 3581, 3582, new Article 7 and title, new
 Article 8 and title, new Article 9 and title,
 new Article 10 and title, new Article 12
 and title, 3640, new Article 13 and title,
 3650, 3651, 3652, 3652.1, 3653, 3654,
 new Article 14 and title, 3700, 3701,
 3702, 3703, 3704, 3705, 3706, 3707, new
 Article 15 and title, 3720, 3721, 3721.1,
 3722, 3723, new Article 16 untitled,
 3730, new Article 17 and title, new
 Article 18 and title, 3750, 3751, 3752,
 3753, 3754, 3755, 3756, new Article 19
 and title, 3760, 3761, 3762, 3763, 3764,
 3765, 3766, new Article 20 and title,
 3770, 3771, and 3772. AMEND: 3604,
 3605, 3605.5, 3701.1, 3705, 3706, 3801,
 3802, renumber old Article 2 with title,
 and 3815.

07/17/08 ADOPT: 3134.1 AMEND: 3130, 3131,
 3132, 3133, 3134, 3135, 3136, 3137,
 3138, 3139, 3140, 3141, 3142, 3143,
 3144, 3145, 3146, 3147

07/14/08 ADOPT: 1700, 1706, 1712, 1714, 1730,
 1731, 1740, 1747, 1747.5, 1748, 1749,
 1750, 1751, 1752, 1753, 1754, 1756,
 1757, 1760, 1766, 1767, 1768, 1770,
 1772, 1776, 1778, 1788, 1790, 1792

07/08/08 ADOPT: 3334 AMEND: 3000

06/23/08 ADOPT: 2275

06/04/08 AMEND: 3190, 3191

05/23/08 ADOPT: 1417 AMEND: 1029, 1206,
 1248, 1357, 1358, 1461

04/18/08 AMEND: 3291, 3293

04/07/08 AMEND: 3173.2

03/27/08 ADOPT: 2536.1

Title 16

08/15/08 AMEND: 1361

08/13/08 AMEND: 3394.6

08/12/08 AMEND: 3394.4

08/07/08 AMEND: 4161

07/30/08 AMEND: 2649

07/23/08	AMEND: 1399.152.2, 1399.153, 1399.153.3	35035, 35036, 35037, 35038, 35039, 35040, 35041, 35042, 35043, 35044, 35045, 35046, 35047, 35048, 35049, 35050, 35051, 35052, 35053, 35054, 35055, 35056, 35057, 35061, 35065, 35066, 35067, 35070, 35072, 35076, 35078, 35080, 35081, 35082, 35083, 35085, 35087, 35089, 35091, 35093, 35095, 35096, 35097, 35099, 36000, 36100 REPEAL: 35023
07/18/08	AMEND: 134 REPEAL: 135	
07/09/08	ADOPT: 1984	
07/08/08	AMEND: 1399.540	
07/03/08	AMEND: 1568	
07/02/08	AMEND: 390, 390.1, 390.3, 390.4, 390.5, 390.6 REPEAL: 390.2	
06/30/08	ADOPT: 119.7	
06/26/08	AMEND: 109, 116	
06/17/08	ADOPT: 4580	04/21/08 AMEND: 54355
06/16/08	ADOPT: 4400, 4402, 4404, 4406, 4420, 4422, 4424, 4426, 4428, 4500, 4520, 4522, 4540, 4542, 4560, 4562	04/21/08 AMEND: 93115.4, 93115.6, 93115.10
06/11/08	REPEAL: 1399.664	04/18/08 ADOPT: 93120, 93120.1, 93120.2, 93120.3, 93120.4, 93120.5, 93120.6, 93120.7, 93120.8, 93120.9, 93120.10, 93120.11, 93120.12
06/04/08	AMEND: 931	
05/21/08	AMEND: 4141	
05/20/08	AMEND: 905	04/11/08 ADOPT: 30333.05, 30333.07, 30333.3, 30335.1, 30335.2, 30335.3, 30335.4, 30335.5, 30335.6, 30335.10, 30336.1, 30336.5, 30336.6, 30336.7, 30336.8, 30338 AMEND: 30195.3, 30295, 30330, 30331, 30332, 30332.1, 30332.2, 30332.3, 30332.4, 30332.5, 30332.6, 30332.7, 30332.8, 30333, 30333.1, 30333.2, 30334, 30336, 30337 REPEAL: 30335
05/19/08	ADOPT: 4440, 4442, 4443, 4444, 4446, 4448, 4450, 4452, 4470, 4472, 4474, 4476, 4478, 4480, 4482, 4484	
05/16/08	AMEND: 1399.696, 1399.697	
05/12/08	AMEND: 1399.523	
05/08/08	REPEAL: 3300	
05/07/08	ADOPT: 1364.32 AMEND: 1364.30	
05/02/08	AMEND: 1079.2	
04/29/08	AMEND: 1970, 1970.4(a), 1973(b)	04/03/08 AMEND: 6508
04/24/08	AMEND: 1387.3	04/02/08 AMEND: 93119
04/24/08	AMEND: 3000	04/02/08 AMEND: 93119
04/17/08	AMEND: 1399.660	
04/16/08	ADOPT: 973, 973.1, 973.2, 973.3, 973.4, 973.5, 973.6	Title 18
04/14/08	AMEND: 1380.1	08/11/08 AMEND: 1807, 1828
04/10/08	AMEND: 4123	08/05/08 AMEND: 3000
04/01/08	AMEND: 1381.5, 1388, 1388.6, 1392	07/16/08 AMEND: 5216, 5310, 5311, 5326.4, 5326.6, 5333, 5333.4, 5333.6, 5523.4
03/26/08	AMEND: 3065	
03/24/08	AMEND: 974	06/23/08 AMEND: 19503
Title 17		06/10/08 ADOPT: 2558, 2559, 2559.1, 2559.3, 2559.5
08/06/08	AMEND: 94006	06/04/08 AMEND: 23038(b)-2, 23038(b)-3
07/14/08	AMEND: 57310, 57332	04/29/08 AMEND: 25137(c)(1)(D)
07/14/08	ADOPT: 100120	04/23/08 AMEND: 1620
07/08/08	AMEND: 95005	04/10/08 AMEND: 1570
07/02/08	AMEND: 2299.1, 93118	Title 19
06/12/08	ADOPT: 94016, 94168 AMEND: 94010, 94011	08/07/08 ADOPT: 1980.00, 1980.01, 1980.02, 1980.03, 1980.04, 1980.05, 1980.06, 1980.07, 1990.00, 1990.01, 1990.02, 1990.03, 1990.04, 1990.05, 1990.06, 1990.07, 1990.08, 1990.09, 1990.10, 1990.11, 1990.12, 1990.13
05/30/08	AMEND: 100080, 100085, 100090, 100100	06/06/08 AMEND: 200, 203, 204, 206, 207, 208, 209, 211, 212, 214, 215, 216, 217
04/30/08	ADOPT: 35004, 35005.1, 35031, 35088, 36050 AMEND: 35001, 35002, 35003, 35005, 35006, 35007, 35008, 35009, 35010, 35012, 35013, 35014, 35015, 35016, 35018, 35019, 35020, 35021, 35022, 35025, 35026, 35027, 35028, 35029, 35030, 35032, 35033, 35034,	04/23/08 ADOPT: 2660 AMEND: 2720, 2723, 2724, 2725, 2726, 2728

Title 20

05/20/08 AMEND: 2323(a), 2323(b), 2323(c), 2323(d), 2323(e), 2323(f), 2325(a), 2329(c), 2329(e), 2330(a), 2332(d), 2333(a), 2335(b)
04/15/08 ADOPT: 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, Appendix A

Title 21

06/30/08 ADOPT: 111, 112, 113, 114, 121, 131, 132, 133, 134, 135, 136, 141, 151, 152, 153

Title 22

08/07/08 AMEND: 51098.5, 51202.5, 51309.5, 51503.3
06/26/08 AMEND: 100140, 100141, 100163, 100172, 100174
06/23/08 AMEND: 12805
06/17/08 ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040

05/08/08 ADOPT: 66260.201 AMEND: 66260.10, 66261.9, 66273.1, 66273.3, 66273.6, 66273.8, 66273.9, 66273.12, 66273.13,

66273.14, 66273.20, 66273.32, 66273.33, 66273.34, 66273.40, 66273.51, 66273.53, 66273.56, 66273.82, 66273.83, 66273.90, Appendix X to Chapter 11

05/06/08 ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329

04/18/08 AMEND: 4410 REPEAL: 4410.5

04/15/08 AMEND: 50960.2, 50960.4, 50960.6, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.34, 50960.36, 50962, 50963, 50964, 50965, 50966

03/27/08 AMEND: 12705(b)

Title 22, MPP

07/09/08 ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405

07/09/08 ADOPT: 88054, 89318 AMEND: 80017, 83017, 83064, 83075, 84065, 84068.2, 84090, 84165, 84265, 86065, 86068.2, 86517, 88001, 88022, 88031, 88065.3, 88068.2, 88069.7, 89317, 89378, 89405

06/30/08 AMEND: 63–300, 63–504, 63–505, 63–601

Title 22, 27

07/07/08 AMEND: Title 22, 67450.11; Title 27, Div. 3, subd. 1, Chapter 4C. and Chapter 6

Title 23

07/01/08 AMEND: 3935

06/27/08 ADOPT: 3949.5

06/26/08 ADOPT: 2918

05/13/08 ADOPT: 3919.3

05/12/08 AMEND: 3947

05/12/08 AMEND: 3939.22

Title 25

07/14/08 AMEND: 2002, 4004, 5002, 5511

04/02/08 ADOPT: 7201, 7205, 7205.1, 7205.2, 7205.3, 7206, 7207, 7209, 7211, 7215, 7225, 7231 AMEND: 7200, 7202, 7204, 7206 (renumbered to 7209.5), 7208, 7210, 7212, 7218 (renumbered to 7217), 7220, 7222, 7224, 7226, 7228, 7230, 7232, 7234, 7239 (renumbered to 7201) REPEAL: 7214, 7216

04/01/08 AMEND: 6932

Title 27

08/08/08 AMEND: 25705(b)

06/17/08 ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503,

25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017,		15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040 03/21/08 AMEND: 15100, 15110, 15140, 15150, 15160, 15170, 15185, 15186, 15187, 15187.1, 15190, 15200, 15210, 15220, 15230, 15240, 15241, 15250, 15260, 15280, 15290, 15300, 15310, 15330, 15400.2, 15600 Title MPP 06/30/08 AMEND: 63–300, 63–504, 63–505, 63–601 06/30/08 AMEND: 42–721, 42–780, 44–303, 44–307, 44–318, 82–812 06/26/08 ADOPT: 40–037, 70–101, 70–102, 70–103, 70–104, 70–105 AMEND: 30–755, 30–770, 40–105, 42–430, 42–431, 42–433, 42–711, 49–020, 49–030, 49–060, 63–403, 69–201, 69–202, 69–205 06/04/08 AMEND: 63–301
--	--	---